Title 27 of the North Carolina Administrative Code
The North Carolina State Bar

Chapter 1
Rules and Regulations of the North Carolina State Bar

Editor's Note: The Rules and Regulations of the North Carolina State Bar are published officially in the North Carolina Reports and the North Carolina Administrative Code - Title 27. They may be cited properly with reference to the Administrative Code. For example, Rule 7.4 of the Revised Rules of Professional Conduct would be cited as 27 NCAC 2 7.4.

SUBCHAPTER A

Organization of the North Carolina State Bar

Section .0200 Membership - Annual Membership Fees

.0201 Classes of Membership

(a) Two Classes of Membership

Members of the North Carolina State Bar shall be divided into two classes: active members and inactive members.

(b) Active Members

The active members shall be all persons who have obtained licenses entitling them to practice law in North Carolina, including persons serving as justices or judges of any state or federal court in this state, unless classified as inactive members by the council. All active members must pay the annual membership fee.

(c) Inactive Members

(1) The inactive members shall include:

(A) all persons who have been admitted to the practice of law in North Carolina but who the council has found are not engaged in the practice of law or holding themselves out as practicing attorneys and who do not occupy any public or private position in which they may be called upon to give legal advice or counsel or to examine the law or to pass upon the legal effect of any act, document, or law, and

(B) those persons granted emeritus pro bono status by the council and allowed to represent indigent clients on a pro bono basis under the supervision of active members working for nonprofit corporations organized pursuant to Chapter 55A of the General Statutes of North Carolina for the sole purpose of rendering legal services to indigents.

(2) Inactive members of the North Carolina State Bar may not practice law, except as provided in this rule for persons granted emeritus pro bono status, and are exempt from payment of membership dues during the period in which they are inactive members. For purposes of the State Bar's membership records, the category of inactive members shall be further divided into the following subcategories:

(A) Retired/nonpracticing

This subcategory includes those members who are not engaged in the practice of law or holding themselves out as practicing attorneys and who are retired, hold positions unrelated to the practice of law, or practice law in other jurisdictions.

(B) Disability inactive status

This subcategory includes members who suffer from a mental or physical condition which significantly impairs the professional judgment, performance, or competence of an attorney, as determined by the courts, the council, or the Disciplinary Hearing Commission.

(C) Disciplinary suspensions/disbarments

This subcategory includes those members who have been suspended from the practice of law or who have been disbarred by the courts, the council, or the Disciplinary Hearing Commission for one or more violations of the Rules of Professional Conduct.

(D) Administrative suspensions

This subcategory includes those members who have been suspended from the practice of law, pursuant to the procedure set forth in Rule .0903 of subchapter 1D, for failure to fulfill the obligations of membership.

(E) Emeritus pro bono status

This subcategory includes those members who are permitted by the council to represent indigent persons under the supervision of active members who are employed by nonprofit corporations duly authorized to provide legal services to such persons. This status may be withdrawn by the council for good cause shown pursuant to the procedure set forth in Rule .0903 of subchapter 1D.

History Note: Statutory Authority G.S. 84-16; G.S. 84-23
Readopted Effective December 8, 1994
Amended March 6, 2008

.0202 Register of Members

(a) Initial Registration with State Bar

Every member shall register by completing and returning to the North Carolina State Bar a signed registration card containing the following information:

(1) name and address;
(2) date;
(3) date passed examination to practice in North Carolina;
(4) date and place sworn in as an attorney in North Carolina;
(5) date and place of birth;
(6) list of all other jurisdictions where the member has been admitted to the practice of law and date of admission;
(7) whether suspended or disbarred from the practice of law in any jurisdiction or court, and if so, when and where, and when readmitted.

(b) Membership Records of State Bar

The secretary shall keep a permanent register for the enrollment of members of the North Carolina State Bar. In appropriate places therein entries shall be made showing the address of each member, date of registration and class of membership, date of transfer from one class to another, if any, date and period of suspension, if any, and such other useful data which the council may from time to time require.

(c) Updating Membership Information.

Each year before July 1, every member shall provide or verify the member's current name, mailing address, and e-mail address.

History Note: Statutory Authority G.S. 84-23; G.S. 84-34
Readopted Effective December 8, 1994

Amended December 7, 1995; October 7, 2010

.0203 Annual Membership Fees; When Due

(a) Amount and Due Date

The annual membership fee shall be in the amount as provided by law and shall be due and payable to the secretary of the North Carolina State Bar on January 1 of each year and the same shall become delinquent if not paid before July 1 of each year.

(b) Late Fee

Any attorney who fails to pay the entire annual membership fee in the amount provided by law and the annual Client Security Fund assessment approved by the North Carolina Supreme Court before July 1 of each year shall also pay a late fee of $30.

(c) Waiver of All or Part of Dues

No part of the annual membership fee or Client Security Fund assessment shall be prorated or apportioned to fractional parts of the year, and no part of the membership fee or Client Security Fund assessment shall be waived or rebated for any reason with the following exceptions:

(1) A person licensed to practice law in North Carolina for the first time by examination shall not be liable for dues or the Client Security Fund assessment during the year in which the person is admitted;

(2) A person licensed to practice law in North Carolina serving in the armed forces, whether in a legal or nonlegal capacity, will be exempt from payment of dues and Client Security Fund assessment for any year in which the member is on active duty in the military service;

(3) A person licensed to practice law in North Carolina who files a petition for inactive status on or before December 31 of a given year shall not be liable for the membership fee or the Client Security Fund assessment for the following year if the petition is granted. A petition shall be deemed timely if it is postmarked on or before December 31.

History Note: Statutory Authority G.S. 84-23; G.S. 84-34
Readopted Effective December 8, 1994
Amended September 7, 1995; December 7, 1995; March 7, 1996

.0204 Certificate of Insurance Coverage

(a) Before July 1 of each year, each active member shall submit a certificate to the secretary of the North Carolina State Bar on a form provided by the secretary stating whether the member is engaged in the private practice of law and, if so, whether the member is covered by a policy of professional liability insurance issued by an insurer legally permitted to provide coverage in North Carolina. The certificate may be submitted in electronic form or in an original document. If, after having most recently submitted a certificate of insurance coverage asserting that the member is covered by a policy of professional liability insurance coverage, a member for any reason ceases to be insured, the member shall immediately advise the North Carolina State Bar of the changed circumstances in writing.

(b) Any active member who fails to submit the certificate of insurance coverage required above in a timely fashion may be suspended from active membership in the North Carolina State Bar in accordance with the procedures set forth in Rule .0903 of subchapter D.

(c) Any member failing to submit a certificate of insurance coverage in a timely fashion shall pay a late fee of $30 to defray the administrative cost of enforcing compliance with this rule; provided, however, that no late fee associated with such failure shall be charged if the member is also liable for a late fee in regard to failure to pay the annual membership fee or Client Security Fund assessment for the same year in a timely fashion.

(d) Notwithstanding the foregoing:

(1) A person licensed to practice law in North Carolina for the first time by examination shall not be required to file a certificate of insurance coverage during the year in which the person is admitted;

(2) A person licensed to practice law in North Carolina serving in the armed forces, in a legal or nonlegal capacity, shall not be required to file a certificate of insurance coverage for any year in which the member is on active duty in military service;

(3) A person licensed to practice law in North Carolina who files a petition for inactive status on or before December 31 of a given year shall not be required to file a certificate of insurance coverage for the following year if the petition is granted. A petition shall be deemed timely if it is postmarked on or before December 31.

History note: Statutory authority G.S. 84-23
Adopted October 1, 2003

Section .0800 Election and Appointment of State Bar Councilors

.0801 Purpose

The purpose of these rules is to promulgate fair, open, and uniform procedures to elect and appoint North Carolina State Bar councilors in all judicial district bars. These rules should encourage a broader and more diverse participation and representation of all attorneys in the election and appointment of councilors.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.0802 Election - When Held; Notice; Nominations

(a) Every judicial district bar, in any calendar year at the end of which the term of one or more of its councilors will expire, shall fill said vacancy or vacancies at an election to be held during that year.

(b) The officers of the district bar shall fix the time and place of such election and shall give to each active member (as defined in G.S. 84-16) of the district bar a written notice thereof directed to him or her at his or her address on file with the North Carolina State Bar, which notice shall be placed in the United States Mail, postage prepaid, at least 30 days prior to the date of the election.

(c) The district bar shall submit its written notice of the election to the North Carolina State Bar, at least six weeks before the date of the election.

(d) The North Carolina State Bar will, at its expense, mail these notices.

(e) The notice shall state the date, time and place of the election, give the number of vacancies to be filled, identify how and to whom nominations may be made before the election, and advise that all elections must be by a majority of the votes cast. If the election will be held at a meeting of the bar, the notice will also advise that additional nominations may be made from the floor at the meeting itself. In judicial districts that permit elections by mail, the notice to members shall advise that nominations may be made in writing directed to the president of the district bar and received prior to a date set out in the notice. Sufficient notice shall be provided to permit nominations received from district bar members to be included on the printed ballots.

History Note: Statutory Authority G.S. 84-18; G.S. 84-23
Readopted Effective December 8, 1994
Amended November 5, 1999

.0803 Election - Voting Procedures

(a) All nominations made either before or at the meeting shall be voted on by secret ballot.

(b) Cumulative voting shall not be permitted.

(c) Nominees receiving a majority of the votes cast shall be declared elected.

History Note: Statutory Authority G.S. 84-18; G.S. 84-23
Readopted Effective December 8, 1994
Amended November 5, 1999

.0804 Procedures Governing Elections by Mail

(a) Judicial district bars may adopt bylaws permitting elections by mail, in accordance with procedures approved by the N.C. State Bar Council and as set out in this section.

(b) Only active members of the judicial district bar may participate in elections conducted by mail.

(c) In districts which permit elections by mail, the notice sent to members referred to in Rule .0802(e) of this subchapter shall advise that the election will be held by mail.

(d) The judicial district bar shall mail a ballot to each active member of the judicial district bar at the member's address of record on file with the North Carolina State Bar. The ballot shall be accompanied by written instructions and shall state when and where the ballot should be returned.

(e) Each ballot shall be sequentially numbered with a red identifying numeral in the upper right hand corner of the ballot. The judicial district bar

shall maintain appropriate records respecting how many ballots were mailed to prospective voters in each election, as well as how many ballots are returned.

(f) Only original ballots will be accepted. No photocopied or faxed ballots will be accepted. Voting by computer or electronic mail will not be permitted.

History Note: Statutory Authority G.S. 84-18; G.S. 84-23
Adopted November 5, 1999

.0805 Vacancies

The unexpired term of any councilor whose office has become vacant because of resignation, death, or any cause other than the expiration of a term, shall be filled within 90 days of the occurrence of the vacancy by an election conducted in the same manner as above provided.

History Note: Statutory Authority G.S. 84-18; 84-23
Readopted Effective December 8, 1994
Amended November 5, 1999

.0806 Bylaws Providing for Geographical Rotation or Division of Representation

Nothing contained herein shall prohibit the district bar of any judicial district from adopting bylaws providing for the geographical rotation or division of its councilor representation.

History Note: Statutory Authority G.S. 84-18; 84-23
Readopted Effective December 8, 1994
Amended November 5, 1999

Section .0900 Organization of the Judicial District Bars

.0901 Bylaws

(a) Each judicial district bar shall adopt bylaws for its governance subject to the approval of the council;

(b) Each judicial district bar shall submit its current bylaws to the secretary of the North Carolina State Bar for review by the council on or before June 1, 1996;

(c) Pending review by the council, any bylaws submitted to the secretary on behalf of a judicial district bar or which already exist in the files of the secretary shall be deemed official and authoritative.

(d) All amendments to the bylaws of any judicial district bar must be filed with the secretary within 30 days of adoption and shall have no force and effect until approved by the council.

(e) The secretary shall maintain an official record for each judicial district bar containing bylaws which have been approved by the council or for which approval is pending.

History Note: Statutory Authority G.S. 84-18.1; 84-23
Adopted March 7, 1996

.0902 Annual Membership Fee

If a judicial district bar elects to assess an annual membership fee from its active members pursuant to N.C.G.S. §84-18.1(b), the following procedures shall apply:

(a) Notice to State Bar. The judicial district bar shall notify the North Carolina State Bar of its election to assess an annual membership fee each year at least thirty days prior to mailing to its members the first invoice therefore, specifying the amount of the annual membership fee, the date after which payment will be delinquent, and the amount of any late fee for delinquent payment.

(b) Accounting to State Bar. No later than thirty days after the end of the judicial district bar's fiscal year, the judicial district bar shall provide the North Carolina State Bar with an accounting of the annual membership fees it collected during such judicial district bar's fiscal year.

(c) Delinquency Date. The date upon which the annual membership fee shall be delinquent if not paid shall be not later than ninety days after, and not sooner than thirty days after, the date of the first invoice for the annual membership fee. The delinquency date shall be stated on the invoice and the invoice shall advise each member that failure to pay the annual membership fee must be reported to the North Carolina State Bar and may result in suspension of the member's license to practice law.

(d) Late Fee. Each judicial district bar may impose, but shall not be required, to impose a late fee of any amount not to exceed fifteen dollars ($15.00) for nonpayment of the annual membership fee on or before the stated delinquency date.

(e) Members Subject to Assessment. Only those lawyers who are active members of a judicial district bar may be assessed an annual membership fee. A lawyer who joins a judicial district bar after the beginning of its fiscal year shall be exempt from the obligation to pay the annual membership fee for that fiscal year only if the lawyer can demonstrate that he or she previously paid an annual membership fee to another judicial district bar with a fiscal year that runs conterminously, for a period of three (3) months or more, with the fiscal year of the lawyer's new judicial district bar.

(f) Hardship Waivers. A judicial district bar may not grant any waiver from the obligation to pay the judicial district bar's annual membership fee. A judicial district bar may waive the late fee upon a showing of good cause.

(g) Reporting Delinquent Members to State Bar. Twelve months after the date of the first invoice for the annual membership fee, the judicial district bar shall report to the North Carolina State Bar all of its members who have not paid the annual membership fee or any late fee.

History Note: Statutory Authority G.S. 84-18.1; 84-23
Adopted December 20, 2000
Amended March 6, 2008

.0903 Fiscal Period

To avoid conflict with the assessment of the membership fees for the North Carolina State Bar, each judicial district bar that assesses a membership fee shall adopt a fiscal year that is not a calendar year.

History Note: Statutory Authority G.S. 84-18.1; 84-23
Adopted December 20, 2000

Section .1000 Model Bylaws For Use by Judicial District Bars

.1001 Name

The name of this district bar shall be THE DISTRICT BAR OF THE _____JUDICIAL DISTRICT, and shall be hereinafter referred to as the "district bar".

History Note: Statutory Authority G.S. 84-18.1; 84-23
Adopted March 7, 1996

.1002 Authority and Purpose

The district bar is formed pursuant to the provisions of Chapter 84 of the North Carolina General Statutes to promote the purposes therein set forth and to comply with the duties and obligations therein or thereunder imposed upon the Bar of this judicial district.

History Note: Statutory Authority G.S. 84-18.1; 84-23
Adopted March 7, 1996

.1003 Membership

The members of the district bar shall consist of two classes: active and inactive.

(a) Active members: The active members shall be all persons who, at the time of the adoption of these bylaws or any time thereafter

(1) are active members in good standing with the North Carolina State Bar; and

(2) reside in the judicial district; or

(3) practice in the judicial district and elect to belong to the district bar as provided in G.S. 84-16.

(b) Inactive members: The inactive members shall be all persons, who, at the time of the adoption of these bylaws or at any time thereafter

(1) have been granted voluntary inactive status by the North Carolina State Bar; and

(2) reside in the judicial district; and

(3) elect to participate, but not vote or hold office, in the district bar by giving written notice to the secretary of the district bar.

History Note: Statutory Authority G.S. 84-18.1; 84-23
Adopted March 7, 1996

.1004 Officers

The officers of the district bar shall be a president, a vice-president, and secretary and/or treasurer who shall be selected and shall serve for the terms set out herein.

(a) President: The president serving at the time these bylaws are effective shall continue to serve for a term ending at the next annual meeting following the adoption or effective date of these bylaws. The president for the following term shall be the then current vice-president. Thereafter, the duly elected vice-president shall automatically succeed to the office of the president for a term of one, two, or three years.

(b) Vice-president: The vice-president serving at the time these bylaws are effective shall continue to serve for a term ending at the next annual meeting following the adoption or effective date of these bylaws, at which time said vice-president shall succeed to the office of the president. Thereafter, the vice-president shall be elected at the annual meeting as hereinafter provided for a term of one, two, or three years.

(c) Secretary and/or treasurer: The secretary and/or the treasurer serving at the time these bylaws are effective shall each continue to serve in their respective offices until the expiration of the term of that office or until successors are appointed by the president (or be elected by the active members of the district bar), whichever occurs later. In all other years, the secretary and/or treasurer shall be appointed by the president (or be elected by the active members of the district bar) to serve for a term of one, two, or three years.

(d) Election: Before (or at) the annual meeting at which officers are to be elected, the Nominating Committee shall submit the names of its nominees for the office of vice-president to the secretary. Nominations from the floor shall be permitted. If no candidate receives a majority of the votes cast, the candidate with the lowest number of votes shall be eliminated and a run-off election shall immediately be held among the remaining candidates. This procedure shall be repeated until a candidate receives a majority of the votes.[1]

(e) Duties: The duties of the officers shall be those usual and customary for such officers, including such duties as may be from time to time designated by resolution of the district bar, the North Carolina State Bar Council or the laws of the State of North Carolina.

(f) Vacancies: If a vacancy in the office of the vice-president, secretary-treasurer occurs, the vacancy will be filled by the board of directors, if any, and if there is no board of directors, then by the vote of the active members at a special meeting of such members. The successor shall serve until the next annual meeting of the district bar. If the office of the president becomes vacant, the vice-president shall succeed to the office of the president and the board of directors, if any, and if there is no board of directors, then by the vote of the active members at a special meeting of such members, will select a new vice-president, who shall serve until the next annual meeting.

(g) Notification: Within 10 days following the annual meeting, or the filling of a vacancy in any office, the president shall notify the executive director of the North Carolina State Bar of the names, addresses and telephone numbers of all officers of the district bar.

(h) Record of bylaws: The president shall ensure that a current copy of these bylaws is filed with the office of the senior resident superior court judge with the _____ Judicial District and with the executive director of the North Carolina State Bar.

(i) Removal from office: The district bar, by a two-thirds vote of its active members present at a duly called meeting, may, after due notice and an opportunity to be heard, remove from office any officer who has engaged in conduct which renders the officer unfit to serve, or who has become disabled, or for other good cause. The office of any officer who, during his or her term of office ceases to be an active member of the North Carolina State Bar shall immediately be deemed vacant and shall be filled as provided in Rule .1004(f) above.

History Note: Statutory Authority G.S. 84-18.1; 84-23
Adopted March 7, 1996

.1005 Councilor

The district bar shall be represented in the State Bar council by one or more duly elected councilors, the number of councilors being determined pursuant to G.S. 84-17. Any councilor serving at the time of the adoption of these bylaws shall complete the term of office to which he or she was previously elected. Thereafter, elections shall be held as necessary. Nominations shall be made and the election held as provided in G.S. 84-18 and in Section .0800 et seq. of Subchapter 1A of the Rules of the North Carolina State Bar (27 N.C.A.C. 1A .0800 et seq.). If more than one council seat is to be filled, separate elections shall be held for each vacant seat. A vacancy in the office of councilor shall be filled as provided by Rule .0804 of Subchapter 1A (27 N.C.A.C. 1A .0804).

History Note: Statutory Authority G.S. 84-18.1; 84-23
Adopted March 7, 1996
Amended November 5, 1999

.1006 Annual Membership Fee

(a) Each active member of the district bar shall:

(1) Pay such annual membership fee, if any, as is prescribed by a majority vote of the active members of the district bar present and voting at a duly called meeting of the district bar, provided, however, that such fee may never exceed the amount of the annual membership fee currently imposed by the North Carolina State Bar. Each member shall pay the annual district bar membership fee at the time and place set forth in the notice thereof mailed to the member by the secretary-treasurer; and

(2) Keep the secretary-treasurer notified of the member's current mailing address and telephone number.

(b) The annual membership fee shall be used to promote and maintain the administration, activities and programs of the district bar.

History Note: Statutory Authority G.S. 84-18.1; 84-23
Adopted March 7, 1996

.1007 Meetings

(a) Annual meetings: The district bar shall meet each _____ at a time and place designated by the president. The president, secretary or other officer shall mail or deliver written notice of the annual meeting to each active member of the district bar at the member's last known mailing address on file with the district bar at least ten days before the date of the annual meeting and shall so certify in the official minutes of the meeting. Notice of the meeting mailed by the executive director of the North Carolina State Bar shall also satisfy the notice requirement. Failure to mail or deliver the notice as herein provided shall invalidate any action at the annual meeting.

(b) Special meetings: Special meetings, if any, may be called at any time by the president or the vice-president. The president, secretary or other officer shall mail or deliver written notice of the special meeting to each active member of the district bar at the member's last known mailing address on file with the district bar at least ten days before the date of any special meeting. Such notice shall set forth the time and place for the special meeting and the purpose(s) thereof. Failure to mail or deliver the notice shall invalidate any action taken at a special meeting.

(c) Quorum: Twenty percent of the active members of the district bar shall constitute a quorum, and a quorum shall be required to take official action on behalf of the district bar.[2]

History Note: Statutory Authority G.S. 84-18.1; 84-23
Adopted March 7, 1996

.1008 District Bar Finances

(a) Fiscal Year: The district bar's fiscal year shall begin on_____ and shall end on _____.

(b) Duties of treasurer: The treasurer shall maintain the funds of the district bar on deposit, initiate any necessary disbursements and keep appropriate financial records.

(c) Annual financial report: Each _____ before the annual meeting, the treasurer shall prepare the district bar's annual financial report for review by the board of directors, if any, and submission to the district bar's annual meeting and the North Carolina State Bar.

(d) District bar checks: All checks written on district bar accounts (arising from the collection of mandatory dues) that exceed $500 must be signed by two of the following: (1) the treasurer, (2) any other officer, (3) another member of the board of directors, or (4) the executive secretary/director, if any.

(e) Fidelity bond: If it is anticipated that receipts from membership fees will exceed $20,000 for any fiscal year, the district bar shall purchase a fidelity bond at least equal in amount to the anticipated annual receipts to indemnify the dis-

trict bar for losses attributable to the malfeasance of the treasurer or any other member having access to district bar funds.

(f) Taxpayer identification number: The treasurer shall be responsible for obtaining a federal taxpayer identification number for the district bar.

History Note: Statutory Authority G.S. 84-18.1; 84-23
Adopted March 7, 1996
Amended July 22, 1999

.1009 Prohibited Activities

(a) Prohibited expenditures: Mandatory district bar dues, if any, shall not be used for the purchase of alcoholic beverages, gifts to public officials, including judges, charitable contributions, recreational activities or expenses of spouses of district bar members or officers. However, such expenditures may be made from funds derived entirely from the voluntary contributions of district bar members.

(b) Political expenditures: The district bar shall not make any expenditures to fund political and ideological activities.

(c) Political activities: The district bar shall not engage in any political or ideological conduct or activity, including the endorsement of candidates and the taking or advocation of positions on political issues, referendums, bond elections, and the like, however, the district bar, and persons speaking on its behalf, may take positions on, or comment upon, issues relating to the regulation of the legal profession and issues or matters relating to the improvement of the quality and availability of legal services to the general public.

History Note: Statutory Authority G.S. 84-18.1; 84-23
Adopted March 7, 1996

.1010 Committees

(a) Standing committee(s): The standing committees shall be the Nominating Committee, Pro Bono Committee, Fee Dispute Resolution Committee, Grievance Committee, and Professionalism Committee provided that, with respect to the Fee Dispute Resolution Committee and the Grievance Committee, the district meets the State Bar guidelines relating thereto.

(b) Fee Dispute Resolution Committee:

(1) The Fee Dispute Resolution Committee shall consist of at least six but not more than eighteen persons appointed by the president to staggered three-year terms as provided in the district bar's Fee Dispute Resolution Plan.

(2) The Fee Dispute Resolution Committee shall be responsible for implementing a Fee Dispute Resolution Plan approved by the Council of the North Carolina State Bar to resolve fee disputes efficiently, economically, and expeditiously without litigation.

(c) Grievance Committee:

(1) The Grievance Committee shall consist of at least five but not more than thirteen persons appointed by the president to staggered three year terms as provided by the Rules and Regulations of the North Carolina State Bar governing Judicial District Grievance Committees.

(2) The Grievance Committee shall assist the Grievance Committee of the North Carolina State Bar by receiving grievances, investigating grievances, evaluating grievances, informally mediating disputes, facilitating communication between lawyers and clients and referring members of the public to other appropriate committees or agencies for assistance.

(3) The Grievance Committee shall operate in strict accordance with the rules and policies of the North Carolina State Bar with respect to district bar grievance committees.

(d) Special Committees: Special committees may be created and appointed by the president.

(e) Nominating Committee:

(1) The Nominating Committee shall be appointed by the officers (or the board of directors) of the district bar and shall consist of at least three active members of the district bar who are not officers or directors of the district bar.[3]

(2) The Nominating Committee shall meet as necessary for the purpose of nominating active members of the district bar as candidates for officers and councilor(s) and the board of directors, if any.

(3) The Nominating Committee members shall serve one-year terms beginning on _____ and ending on _____.

(4) Any active member whose name is submitted for consideration for nomination to any office or as a councilor must have indicated his or her willingness to serve if selected.

(f) Pro Bono Committee:

(1) The Pro Bono Committee shall consist of at least five active members of the district bar appointed by the president.

(2) The Pro Bono Committee shall meet at least once each quarter and shall have the duty of encouraging members of the district bar to provide pro bono legal services. The committee shall also develop programs whereby attorneys not involved in other volunteer legal service programs may provide pro bono legal service in their areas of concentration and practice.

(3) The members of the Pro Bono Committee shall serve one-year terms commencing on _____.

(g) Professionalism Committee:

(1) The Professionalism Committee shall consist of the three immediate past presidents of the district bar or such other members of the district bar as shall be appointed by the president.

(2) The purpose of the Professionalism Committee shall be the promotion of professionalism and thereby the bolstering of public confidence in the legal profession. The committee may further enhance professionalism through CLE programs and, when appropriate, through confidential peer intervention in association with the Professionalism Support Initiative (PSI) which is sponsored and supported by the Chief Justice's Commission on Professionalism. The PSI effort is to investigate and informally assist with client-lawyer, lawyer-lawyer, and lawyer-judge relationships to ameliorate disputes, improve communications, and repair relationships. The Professionalism Committee shall have no authority to discipline any lawyer or judge, or to force any lawyer or judge to take any action. The committee shall not investigate or attempt to resolve complaints of professional misconduct cognizable under the Rules of Professional Conduct and shall act in accordance with Rules 1.6(c) and 8.3 of the Rules of Professional Conduct. The committee shall consult and work with the Chief Justice's Commission on Professionalism when appropriate.

History Note: Statutory Authority G.S. 84-18.1; 84-23
Adopted March 7, 1996
Amended March 6, 2002; March 6, 2008

.1011 Board of Directors or Executive Committee

(a) Membership of board: A board of directors consisting of at least _____ active members of the district bar shall be elected. At all times, the board of directors shall include at least one director from each county in the judicial district. The board of directors serving when these bylaws become effective shall continue to serve until the following annual meeting. Beginning on _____ immediately after the effective date of these bylaws, the president shall appoint an initial board of directors who shall serve three-year terms commencing on _____, except that the terms of the initial members of the board shall be staggered at one-year intervals to ensure continuity and experience. To effect the staggered initial terms, the president will determine which of the initial members shall serve terms of less than three years.

The State Bar councilor (or councilors) from the judicial district shall be an ex officio member (or members) of the district bar board of directors or Executive Committee.

(b) Terms of directors: After the initial staggered terms of the board of directors expire, successors shall be elected by the active members at the annual district bar meeting, as set out in Rule .1004(d) above, and Rule .1011(c) and (d) below. Following the completion of the initial staggered terms, the directors shall serve three-year terms beginning on _____ following their election.

(c) Designated and at-large seats in multi-county districts: In multi-county districts, one seat on the board of directors shall be set aside and designated for each county in the district. Only active members of the district bar who reside or work in the designated county may be elected to a desig-

nated county seat. All other seats on the board of directors shall be at-large seats which may be filled by any active member of the district bar.

(d) Elections: When one or more seats on the board of directors become vacant, an election shall be held at the annual meeting of the district bar. Except as otherwise provided herein, the election shall be conducted as provided for in Rule .1004(d) above. The candidates receiving the highest number of votes cast will be elected, regardless of whether any of the candidates received a majority of the votes cast, provided that designated seats will be filled by the candidates receiving the highest number of votes who live or work in the designated county, regardless of whether any of the candidates received a majority of the votes cast.

(e) Vacancies: If a vacancy occurs on the board of directors, the president (or the board of directors) shall appoint a successor who shall serve until the next annual meeting of the district bar. If the vacancy occurs in a designated seat for a particular county within the district, the successor will be selected from among the active members of the district bar who live or work in the designated county.

(f) Duties of board of directors: The board of directors shall have the responsibilities described Rules .1004(f) and .1007(c) above. The board of directors shall also consult with the officers regarding any matters of district bar business or policy arising between meetings and may act for the district bar on an emergency basis if necessary, provided that any such action shall be provisional pending its consideration by the district bar at its next duly called meeting. The board of directors may not impose on its own authority any sort of fee upon the membership.

History Note: Statutory Authority G.S. 84-18.1; 84-23
Adopted March 7, 1996

.1012 Amendment of the Bylaws

The membership of the district bar, by a (majority, two-thirds, etc.) vote of the active members present at any duly called meeting at which there is a quorum present and voting throughout, may amend these bylaws in ways not inconsistent with the constitution of the United States, the policies and rules of the North Carolina State Bar and the laws of the United States and North Carolina.

History Note: Statutory Authority G.S. 84-18.1; 84-23
Adopted March 7, 1996

.1013 Selection of Nominees for District Court Judge

Unless otherwise required by law, the following procedures shall be used to determine the nominees to be recommended to the Governor pursuant to N.C. Gen. Stat. §7A-142 for vacant district court judgeships in the judicial district.

(a) Meeting for Nominations: The nominees shall be selected by secret, written ballot of those members present at a meeting of the district bar called for this purpose. Fifteen (15) days notice of the meeting shall be given, by mail, to the last known address of each district bar member. Alternatively, if a bylaw permitting elections by mail is adopted by the district bar, the procedures set forth in the bylaw and in Rule .0804 of Subchapter 1A of the Rules of the North Carolina State Bar (27 N.C.A.C. 1A, .0804), shall be followed.

(b) Candidates: Persons who want to be considered for the vacancy shall notify the President in writing five (5) days prior to the meeting at which the election will be conducted or, if the election is by mail, five (5) days prior to the mailing of the ballots.

(c) Voting: Each district bar member may vote for three candidates. Cumulative voting is prohibited.

(d) Submission to Governor: The three candidates receiving the highest number of votes shall be the nominees to fill the vacancy on the district court and their names, and vote totals, shall be transmitted to the Governor. In the event of a tie for third place, the names of those candidates involved in the tie shall be transmitted to the Governor together with the names of the two candidates receiving the highest number of votes.

Statutory Authority G.S. 84-18.1; 84-23; 7A-142
Adopted February 27, 2003

Endnotes:

1. The procedure for voting for, and election of, councilors is set by statute and rules of the North Carolina State Bar. District bar voting procedure with regard to matters relating to district bar dues is now statutorily prescribed in North Carolina General Statutes Section 84-18.1. The procedure, but not the manner or method of conducting the vote, to submit nominations to the governor to fill vacancies on the district court bench is set forth in North Carolina General Statutes Section 7A-142. It is suggested that, for voting upon, and elections for, other district bar matters and issues, the district bars be permitted to adopt bylaws providing for procedures as may seem appropriate for each district bar. Such rules might address notice provisions, including how much notice is given and permissible methods of giving notice, what shall constitute a quorum (see footnote 2), and how any such election shall be conducted (including whether or not members must be present to vote, whether proxies will be permitted, whether or not absentee or some other form of mail ballot will be allowed and whether or not cumulative voting should be permitted when elections for multiple candidates or positions are being conducted).

2. Consistent with the comment contained in footnote 1, each district bar should be permitted to adopt bylaws providing for what shall constitute a quorum based upon each district bar's particular situation and circumstances. The above provision regarding quorum should be considered only as a a suggestion, and individual district bars may wish to provide that a different percentage of the membership shall constitute a quorum. Other methods of defining a quorum should also be permitted. For example, in certain of the larger district bars, any quorum based on a percentage of the membership, except for a very nominal percentage, may be difficult to attain. One alternate quorum provision might read as follows: A quorum shall be those present at any membership meeting for which proper notice was given.

3. The composition of the Nominating Committee set forth above is a suggestion only. The district bars may choose to constitute their nominating committees in a different manner, as for example, letting the committee consist of the three most immediate past presidents of the district bar who are still active members of the district bar as defined herein. Smaller district bars may choose to have no Nominating Committee and nominate and elect officers from the floor at the annual meeting of the district bar.

Section .1200 Filing Papers with and Serving the North Carolina State Bar

.1201 When Papers Are Filed Under These Rules and Regulations

Whenever in these rules and regulation there is a requirement that petitions, notices or other documents be filed with or served on the North Carolina State Bar or the council, the same shall be filed with or served on the secretary of the North Carolina State Bar.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

Section .1400 Rulemaking Procedures

.1401 Publication for Comment

(a) As a condition precedent to adoption, a proposed rule or amendment to a rule must be published for comment as provided in subsection (c).

(b) A proposed rule or amendment to a rule must be presented to the Executive Committee and the council prior to publication for comment, and specifically approved for publication by both.

(c) A proposed rule or amendment to a rule must be published for comment in an official printed publication of the North Carolina State Bar that is mailed to the membership at least 30 days in advance of its final consideration by the council. The publication of any such proposal must be accompanied by a prominent statement inviting all interested parties to submit comment to the North Carolina State Bar at a specified postal or e-mail address prior to the next meeting of the Executive Committee, the date of which shall be set forth.

History Note: Statutory Authority G.S. 84-23
Adopted August 23, 2007

.1402 Review by the Executive Committee

At its next meeting following the publication or republication of any proposed rule or amendment to a rule, the Executive Committee shall review the proposal and any comment that has been received concerning the proposal. The Executive Committee shall then:

(a) recommend the proposal's adoption by the council;

(b) recommend the proposal's adoption by the council with nonsubstantive modification;

(c) recommend to the council that the proposal be republished with substantive modification;

(d) defer consideration of the matter to its next regular business meeting;

(e) table the matter; or

(f) reject the proposal.

History Note: Statutory Authority G.S. 84-23

Adopted August 23, 2007

.1403 Action by the Council and Review by the North Carolina Supreme Court

(a) Whenever the Executive Committee recommends adoption of any proposed rule or amendment to a rule in accordance with the procedure set forth in Rule .1402 above, the council at its next regular business meeting shall consider the proposal, the Executive Committee's recommendation, and any comment received from interested parties, and:

(1) decide whether to adopt the proposed rule or amendment, subject to the approval of the North Carolina Supreme Court as described in G.S. 84-21;

(2) reject the proposed rule or amendment; or

(3) refer the matter back to the Executive Committee for reconsideration.

(b) Any proposed rule or amendment to a rule adopted by the council shall be transmitted by the secretary to the North Carolina Supreme Court for its review on a schedule approved by the Court, but in no event later than 120 days following the council's adoption of the proposed rule or amendment.

(c) No proposed rule or amendment to a rule adopted by the council shall take effect unless and until it is approved by order of the North Carolina Supreme Court.

(d) The secretary shall promptly transmit the official text of any proposed rule or amendment to a rule adopted by the council and approved by the North Carolina Supreme Court to the Office of Administrative Hearings for publication in the North Carolina Administrative Code.

(e) Any action taken by the council or the North Carolina Supreme Court in regard to any proposed rule or amendment to a rule shall be reported in the next issue of the printed publication referenced in Rule .1401 above.

History Note: Statutory Authority G.S. 84-23

Adopted August 23, 2007

chairperson of the multi-district grievance committee shall certify in writing the establishment of the district grievance committee to the secretary of the North Carolina State Bar. The active members of each participating judicial district may adopt a set of bylaws not inconsistent with these rules by majority vote of the active members of each participating judicial district present at a duly called meeting of each participating judicial district bar, at which a quorum is present. The chairperson of the multi-district grievance committee shall promptly provide a copy of any such bylaws to the secretary of the North Carolina State Bar.

(c) **Appointment of District Grievance Committee Members**

(1) **Members of District Committees** - Each district grievance committee shall be composed of not fewer than five nor more than 21 members, all of whom shall be active members in good standing both of the judicial district bar to which they belong and of the North Carolina State Bar. In addition to the attorney members, each district grievance committee may also include one to five public members who have never been licensed to practice law in any jurisdiction. Public members shall not perform investigative functions regarding grievances but in all other respects shall have the same authority as the attorney members of the district grievance committee.

(2) **Chairperson** - The chairperson of the district grievance committee shall be selected by the president of the judicial district and shall serve at his or her pleasure. Alternatively, the chairperson may be selected and removed as provided in the district bar bylaws.

(3) **Selection of Attorney and Public Members** - The attorney and public members of the district grievance committee shall be selected by and serve at the pleasure of the president of the judicial district bar and the chairperson of the district grievance committee. Alternatively, the district grievance committee members may be selected and removed as provided in the district bar bylaws.

(4) **Term and Replacement of Members** - The members of the district grievance committee, including the chairperson, shall be appointed for staggered three-year terms, except that the president and chairperson shall appoint some of the initial committee members to terms of less than three years, to effectuate the staggered terms. No member shall serve more than one term, without first having rotated off the committee for a period of at least one year between three-year terms. Any member who resigns or otherwise becomes ineligible to continue serving as a member shall be replaced by appointment by the president of the judicial district bar and the chairperson of the committee or as provided in the district bar bylaws as soon as practicable.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994
Amended October 7, 2010

.0202 Jurisdiction & Authority of District Grievance Committees

(a) **District Grievance Committees are Subject to the Rules of the North Carolina State Bar** - The district grievance committee shall be subject to the rules and regulations adopted by the Council of the North Carolina State Bar.

(b) **Grievances Filed with District Grievance Committee** - A district grievance committee may investigate and consider grievances filed against attorneys who live or maintain offices within the judicial district and which are filed in the first instance with the chairperson of the district grievance committee. The chairperson of the district grievance committee will immediately refer to the State Bar any grievance filed locally in the first instance which

(1) alleges misconduct against a member of the district grievance committee;

(2) alleges that any attorney has embezzled or misapplied client funds; or

(3) alleges any other serious violation of the Rules of Professional Conduct which may be beyond the capacity of the district grievance committee to investigate.

(c) **Grievances Referred to District Grievance Committee** - The district grievance committee shall also investigate and consider such grievances as are referred to it for investigation by the counsel of the North Carolina State Bar.

(d) **Grievances Involving Fee Disputes**

(1) **Notice to Complainant of Fee Dispute Resolution Program** - If a grievance filed initially with the district bar consists solely or in part of a fee dispute, the chairperson of the district grievance committee shall notify the complainant in writing within 10 working days of receipt of the grievance that the complainant may elect to participate in the North Carolina State Bar Fee Dispute Resolution Program. If the grievance consists solely of a fee dispute, the letter to the complainant shall follow the format set out in Rule .0208 of this subchapter. If the grievance consists in part of matters other than a fee dispute, the letter to the complainant shall follow the format set out in Rule .0209 of this subchapter. A respondent attorney shall not have the right to elect to participate in fee arbitration.

(2) **Handling Claims Not Involving Fee Dispute** - Where a grievance alleges multiple claims, the allegations not involving a fee dispute will be handled in the same manner as any other grievance filed with the district grievance committee.

(3) **Handling Claims Not Submitted to Fee Dispute Resolution by Complainant** - If the complainant elects not to participate in the State Bar's Fee Dispute Resolution Program, or fails to notify the chairperson that he or she elects to participate within 20 days following mailing of the notice referred to in Rule .0202(d)(1) above, the grievance will be handled in the same manner as any other grievance filed with the district grievance committee.

(4) **Referral to Fee Dispute Resolution Program** - Where a complainant timely elects to participate in fee dispute resolution, and the judicial district in which the respondent attorney maintains his or her principal office has a fee dispute resolution committee, the chairperson of the district grievance committee shall refer the portion of the grievance involving a fee dispute to the judicial district fee dispute resolution committee. If the judicial district in which the respondent attorney maintains his or her principal office does not have a fee dispute resolution committee, the chairperson of the district grievance committee shall refer the portion of the grievance involving a fee dispute to the State Bar Fee Dispute Resolution Program for resolution. If the grievance consists entirely of a fee dispute, and the complainant timely elects to participate in fee dispute resolution, no grievance file will be established.

(e) **Authority of District Grievance Committees** - The district grievance committee shall have authority to

(1) assist a complainant who requests assistance to reduce a grievance to writing;

(2) investigate complaints described in Rule .0202(b) and(c) above by interviewing the complainant, the attorney against whom the grievance was filed and any other persons who may have relevant information regarding the grievance and by requesting written materials from the complainant, respondent attorney, and other individuals;

(3) explain the procedures of the district grievance committee to complainants and respondent attorneys;

(4) find facts and recommend whether or not the State Bar's Grievance Committee should find that there is probable cause to believe that the respondent has violated one or more provisions of the Revised Rules of Professional Conduct. The district grievance committee may also make a recommendation to the State Bar regarding the appropriate disposition of the case, including referral to the Lawyer Assistance Program pursuant to Rule .0112(j) or to a program of law office management training approved by the State Bar;

(5) draft a written report stating the grounds for the recommended disposition of a grievance assigned to the district grievance committee;

(6) notify the complainant and the respondent attorney where the district grievance committee recommends that the State Bar find that there is no probable cause to believe that the respondent has violated the Rules of Professional Conduct. Where the district grievance committee recommends that the State Bar find that there is probable cause to believe that the respondent has violated one or more provisions of the Rules of Professional Conduct, the committee shall notify the respondent attorney of its recommendation and shall notify the complainant that the district grievance committee has concluded its investigation and has referred the matter to the State Bar for final resolution. Where the district grievance committee recommends a finding of no probable cause, the letter of notification to the respondent attorney and to the complainant shall follow the format set out in Rule .0210 of this subchapter. Where the district grievance committee recommends a finding of probable cause, the letter of notification to the respondent attorney shall follow the format set out in Rule .0211 of this subchapter. The letter of notification to the complainant shall follow the format set out in Rule .0212 of this subchapter;

ices performed by such law student;

(6) certify in writing that he or she has read and is familiar with the North Carolina Revised Rules of Professional Conduct and the opinions interpretive thereof.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994
Amended June 7, 2001; March 6, 2008

.0204 Form and Duration of Certification

Upon receipt of the written materials required by Rule .0203(3) and (6) and Rule .0205(6), the North Carolina State Bar shall certify that the law student may serve as a legal intern. The certification shall be subject to the following limitations:

(a) Duration. The certification shall be effective for 18 months or until the announcement of the results of the first bar examination following the legal intern's graduation whichever is earlier. If the legal intern passes the bar examination, the certification shall remain in effect until the legal intern is sworn-in by a court and admitted to the bar.

(b) Withdrawal of Certification. The certification shall be withdrawn by the State Bar, without hearing or a showing of cause, upon receipt of

(1) notice from a representative of the legal intern's law school, authorized to act by the dean of the law school, that the legal intern has not graduated but is no longer enrolled;

(2) notice from a representative of the legal intern's law school, authorized to act by the dean of the law school, that the legal intern is no longer in good standing at the law school;

(3) notice from a supervising attorney that the supervising attorney is no longer supervising the legal intern and that no other qualified attorney has assumed the supervision of the legal intern; or

(4) notice from a judge before whom the legal intern has appeared that the certification should be withdrawn.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994
Amended June 7, 2001

.0205 Supervision

(a) A supervising attorney shall

(1) be an active member of the North Carolina State Bar who has practiced law as a full-time occupation for at least two years;

(2) supervise no more than two legal interns concurrently, provided, however, there is no limit on the number of legal interns who may be supervised concurrently by an attorney who is a full-time member of a law school's faculty or staff whose primary responsibility is supervising legal interns in a legal aid clinic and, further provided, that an attorney who supervises legal interns through an externship or out-placement program of a law school legal aid clinic may supervise up to five legal interns;

(3) assume personal professional responsibility for any work undertaken by a legal intern while under his or her supervision;

(4) assist and counsel with a legal intern in the activities permitted by these rules and review such activities with the legal intern, all to the extent required for the proper practical training of the legal intern and the protection of the client;

(5) read, approve and personally sign any pleadings or other papers prepared by a legal intern prior to the filing thereof, and read and approve any documents prepared by a legal intern for execution by a client or third party prior to the execution thereof;

(6) prior to commencing the supervision, assume responsibility for supervising a legal intern by filing with the North Carolina State Bar a signed notice setting forth the period during which the supervising attorney expects to supervise the activities of an identified legal intern, and that the supervising attorney will adequately supervise the legal intern in accordance with these rules; and

(7) notify the North Carolina State Bar in writing promptly whenever the supervision of a legal intern ceases.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994
Amended June 7, 2001; March 6, 2002; March 6, 2008

.0206 Activities

(a) A properly certified legal intern may engage in the activities provided in this rule under the supervision of an attorney qualified and acting in accordance with the provisions of Rule .0205 of this subchapter.

(b) Without the presence of the supervising attorney, a legal intern may give advice to a client, including a government agency, on legal matters provided that the legal intern gives a clear prior explanation that the legal intern is not an attorney and the supervising attorney has given the legal intern permission to render legal advice in the subject area involved.

(c) A legal intern may represent an eligible person, the state in criminal prosecutions, a criminal defendant who is represented by the public defender, or a government agency in any proceeding before a federal, state, or local tribunal, including an administrative agency, if prior consent is obtained from the tribunal or agency upon application of the supervising attorney. Each appearance before the tribunal or agency shall be subject to any limitations imposed by the tribunal or agency including, but not limited to, the requirement that the supervising attorney physically accompany the legal intern.

(d) In all cases under this rule in which a legal intern makes an appearance before a tribunal or agency on behalf of a client who is an individual, the legal intern shall have the written consent in advance of the client. The client shall be given a clear explanation, prior to the giving of his or her consent, that the legal intern is not an attorney. This consent shall be filed with the tribunal and made a part of the record in the case. In all cases in which a legal intern makes an appearance before a tribunal or agency on behalf a government agency, the consent of the government agency shall be presumed if the legal intern is participating in an internship program of the government agency. A statement advising the court of the legal intern's participation in an internship program of the government agency shall be filed with the tribunal and made a part of the record in the case.

(e) In all cases under this rule in which a legal intern is permitted to make an appearance before a tribunal or agency, subject to any limitations imposed by the tribunal, the legal intern may engage in all activities appropriate to the representation of the client, including, without limitation, selection of and argument to the jury, examination and cross-examination of witnesses, motions and arguments thereon, and giving notice of appeal.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994
Amended June 7, 2001; March 6, 2002; March 6, 2008

.0207 Use of Student's Name

(a) A legal intern's name may properly

(1) be printed or typed on briefs, pleadings, and other similar documents on which the legal intern has worked with or under the direction of the supervising attorney, provided the legal intern is clearly identified as a legal intern certified under these rules, and provided further that the legal intern shall not sign his or her name to such briefs, pleadings, or other similar documents;

(2) be signed to letters written on the letterhead of the supervising attorney, legal aid clinic, or government agency, provided there appears below the legal intern's signature a clear identification that the legal intern is certified under these rules. An appropriate designation is "Certified Legal Intern under the Supervision of [supervising attorney]"; and

(3) be printed on a business card, provided the name of the supervising attorney also appears on the business card and there appears below the legal intern's name a clear statement that the legal intern is certified under these rules. An appropriate designation is "Certified Legal Intern under the Supervision of [supervising attorney]."

(b) A student's name may not appear on the letterhead of a supervising attorney, legal aid clinic, or government agency.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994
Amended June 7, 2001; March 6, 2008; October 7, 2010

given to any active member who does not practice in North Carolina or represent North Carolina clients on matters governed by North Carolina law and who is:

(1) A full-time teacher at the School of Government (formerly the Institute of Government) of the University of North Carolina;

(2) A full-time teacher at a law school in North Carolina that is accredited by the American Bar Association; or

(3) A full-time teacher of law-related courses at a professional school accredited by its respective professional accrediting agency.

(f) Special Circumstances Exemptions. The board may exempt an active member from the continuing legal education requirements for a period of not more than one year at a time upon a finding by the board of special circumstances unique to that member constituting undue hardship or other reasonable basis for exemption, or for a longer period upon a finding of a permanent disability.

(g) Pro Hac Vice Admission. Nonresident attorneys from other jurisdictions who are temporarily admitted to practice in a particular case or proceeding pursuant to the provisions of G.S. 84-4.1 shall not be subject to the requirements of these rules.

(h) Senior Status Exemption. The board may exempt an active member from the continuing legal education requirements if

(1) the member is sixty-five years of age or older and

(2) the member does not render legal advice to or represent a client unless the member associates with another active member who assumes responsibility for the advice or representation.

(i) CLE Record During Exemption Period. During a calendar year in which the records of the board indicate that an active member is exempt from the requirements of these rules, the board shall not maintain a record of such member's attendance at accredited continuing legal education activities. Upon the termination of the member's exemption, the member may request carry over credit up to a maximum of twelve (12) credits for any accredited continuing legal education activity attended during the calendar year immediately preceding the year of the termination of the exemption. Appropriate documentation of attendance at such activities will be required by the board.

(j) Permanent Disability. Attorneys who have a permanent disability that makes attendance at CLE programs inordinately difficult may file a request for a permanent substitute program in lieu of attendance and shall therein set out continuing legal education plans tailored to their specific interests and physical ability. The board shall review and approve or disapprove such plans on an individual basis and without delay.

(k) Application for Substitute Compliance and Exemptions. Other requests for substitute compliance, partial waivers, other exemptions for hardship or extenuating circumstances may be granted by the board on a yearly basis upon written application of the attorney.

(l) Bar Examiners. Credit is earned through service as a bar examiner of the North Carolina Board of Law Examiners. The board will award 12 hours of CLE credit for the preparation and grading of a bar examination by a member of the North Carolina Board of Law Examiners.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711.

Readopted Effective December 8, 1994

Amended February 12, 1997; October 1, 2003; March 3, 2005; October 7, 2010

.1518 Continuing Legal Education Program

(a) Each active member subject to these rules shall complete 12 hours of approved continuing legal education during each calendar year beginning January 1, 1988, as provided by these rules and the regulations adopted thereunder.

(b) Of the 12 hours

(1) at least 2 hours shall be devoted to the area of professional responsibility or professionalism or any combination thereof; and

(2) effective January 1, 2002, at least once every three calendar years, each member shall complete an hour of continuing legal education instruction on substance abuse and debilitating mental conditions, as defined in Rule .1602 (c). This hour shall be credited to the 12 hour requirement set forth in Rule .1518(a) above but shall be in addition to the requirement of Rule .1518(b)(1) above. To satisfy this requirement, a member must attend an accredited program on substance abuse and debilitating mental conditions that is at least one hour long.

(c) Members may carry over up to 12 credit hours earned in one calendar year to the next calendar year, which may include those hours required by Rule .1518(b) above. Additionally, a newly admitted active member may include as credit hours which may be carried over to the next succeeding year, any approved CLE hours earned after that member's graduation from law school.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711.

Readopted Effective December 8, 1994

Amended February 12, 1997; March 3, 1999; November 6, 2001; October 1, 2003

.1519 Accreditation Standards

The board shall approve continuing legal education activities which meet the following standards and provisions.

(a) They shall have significant intellectual or practical content and the primary objective shall be to increase the participant's professional competence and proficiency as a lawyer.

(b) They shall constitute an organized program of learning dealing with matters directly related to the practice of law, professional responsibility, professionalism, or ethical obligations of lawyers.

(c) Credit may be given for continuing legal education activities where live instruction is used or mechanically or electronically recorded or reproduced material is used, including videotape or satellite transmitted programs.

Subject to the limitations set forth in Rule .1604(e) of this subchapter, credit may also be given for continuing legal education activities on CD-ROM and on a computer website accessed via the Internet.

(d) Continuing legal education materials are to be prepared, and activities conducted, by an individual or group qualified by practical or academic experience.

Credit shall not be given for any continuing legal education activity taught or presented by a disbarred lawyer except a course on professional responsibility (including a course or program on the effects of substance abuse and chemical dependency, or debilitating mental conditions on a lawyer's professional responsibilities). The advertising for the activity shall disclose the lawyer's disbarment.

(e) Continuing legal education activities shall be conducted in a setting physically suitable to the educational activity of the program and, when appropriate, equipped with suitable writing surfaces or sufficient space for taking notes.

(f) Thorough, high quality, and carefully prepared written materials should be distributed to all attendees at or before the time the course is presented. These may include written materials printed from a computer presentation, computer website, or CD-ROM. A written agenda or outline for a presentation satisfies this requirement when written materials are not suitable or readily available for a particular subject. The absence of written materials for distribution should, however, be the exception and not the rule.

(g) Any accredited sponsor must remit fees as required and keep and maintain attendance records of each continuing legal education program sponsored by it, which shall be furnished to the board in accordance with regulations.

(h) Except as provided in Rules .1501 and.1604

of this subchapter, in-house continuing legal education and self-study shall not be approved or accredited for the purpose of complying with Rule .1518 of this subchapter.

(i) Programs that cross academic lines, such as accounting-tax seminars, may be considered for approval by the board. However, the board must be satisfied that the content of the activity would enhance legal skills or the ability to practice law.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711.

Readopted Effective December 8, 1994

Amended March 1, 2001; October 1, 2003; February 5, 2009

.1520 Accreditation of Sponsors and Programs

(a) Accreditation of Sponsors. An organization desiring accreditation as an accredited sponsor of courses, programs, or other continuing legal education activities may apply for accredited sponsor status to the board. The board shall approve a sponsor as an accredited sponsor if it is satisfied that the sponsor's programs have met the standards set forth in Rule .1519 of this subchapter and reg-

ulations established by the board.

(b) Presumptive Approval for Accredited Sponsors.

(1) Once an organization is approved as an accredited sponsor, the continuing legal education programs sponsored by that organization are presumptively approved for credit and no application must be made to the board for approval. The board may at any time revoke the accreditation of an accredited sponsor for failure to satisfy the requirements of Rule .1512 and Rule .1519 of this subchapter, and for failure to satisfy the Regulations Governing the Administration of the Continuing Legal Education Program set forth in Section .1600 of this subchapter.

(2) The board may evaluate a program presented by an accredited sponsor and, upon a determination that the program does not satisfy the requirements of Rule .1519, notify the accredited sponsor that any presentation of the same program, the date for which was not included in the announcement required by Rule .1520(e) below, is not approved for credit. Such notice shall be sent by the board to the accredited sponsor within 45 days after the receipt of the announcement. The accredited sponsor may request reconsideration of such a decision by submitting a letter of appeal to the board within 15 days of receipt of the notice of disapproval. The decision by the board on an appeal is final.

(c) Unaccredited Sponsor Request for Program Approval.

(1) Any organization not accredited as an accredited sponsor that desires approval of a course or program shall apply to the board. The board shall adopt regulations to administer the accreditation of such programs consistent with the provisions of Rule .1519 of this subchapter. Applicants denied approval of a program may request reconsideration of such a decision by submitting a letter of appeal to the board within 15 days of receipt of the notice of disapproval. The decision by the board on an appeal is final.

(2) The board may at any time decline to accredit CLE programs offered by a non-accredited sponsor for a specified period of time, as determined by the board, for failure to comply with the requirements of Rule .1512, Rule .1519 and Section .1600 of this subchapter.

(d) Member Request for Program Approval. An active member desiring approval of a course or program that has not otherwise been approved shall apply to the board. The board that shall adopt regulations to administer approval requests consistent with the requirements Rule .1519 of this subchapter. Applicants denied approval of a program may request reconsideration of such a decision by submitting a letter of appeal to the board within 15 days of the receipt of the notice of disapproval. The decision by the board on an appeal is final.

(e) Program Announcements of Accredited Sponsors. At least 50 days prior to the presentation of a program, an accredited sponsor shall file an announcement, on a form prescribed by the board, notifying the board of the dates and locations of presentations of the program and the sponsor's calculation of the CLE credit hours for the program.

(f) Records. The board may provide by regulation for the accredited sponsor, unaccredited sponsor, or active member for whom a continuing legal education program has been approved to maintain and provide such records as required by the board.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711.

Readopted Effective December 8, 1994

Amended February 27, 2003; March 3, 2005; October 7, 2010

.1521 Credit Hours

The board may designate by regulation the number of credit hours to be earned by participation, including, but not limited to, teaching, in continuing legal education activities approved by the board.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711.

Readopted Effective December 8, 1994

.1522 Annual Report and Compliance Period

(a) Annual Written Report. Commencing in 1989, each active member of the North Carolina State Bar shall provide an annual written report to the North Carolina State Bar in such form as the board shall prescribe by regulation concerning compliance with the continuing legal education program for the preceding year or declaring an exemption under Rule .1517 of this subchapter. The annual report form shall be corrected, if necessary, signed by the member, and promptly returned to the State Bar. Upon receipt of a signed annual report form, appropriate adjustments shall be made to the member's continuing legal education record with the State Bar. No further adjustments shall thereafter be made to the member's continuing legal education record unless, on or before July 31 of the year in which the report form is mailed to members, the member shows good cause for adjusting the member's continuing legal education record for the preceding year.

(b) Compliance Period. The period for complying with the requirements of Rule .1518 of this subchapter is January 1 to December 31. A member may complete the requirements for the year on or by the last day of February of the succeeding year provided, however, that this additional time shall be considered a grace period and no extensions of this grace period shall be granted. All members are encouraged to complete the requirements within the appropriate calendar year.

(c) Report. Prior to January 31 of each year, the prescribed report form concerning compliance with the continuing legal education program for the preceding year shall be mailed to all active members of the North Carolina State Bar.

(d) Late Filing Penalty. Any attorney who, for whatever reasons, files the report showing compliance or declaring an exemption after the due date of the last day of February shall pay a $75.00 late filing penalty. This penalty shall be submitted with the report. A report that is either received by the board or postmarked on or before the due date shall be considered timely filed. An attorney who is issued a notice to show cause pursuant to Rule .1523(b) shall pay a late compliance fee of $125.00 pursuant to Rule .1523(e) of this subchapter. The board may waive the late filing penalty or the late compliance fee upon a showing of hardship or serious extenuating circumstances or other good cause.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711.

Readopted Effective December 8, 1994

Amended October 1, 2003; March 3, 2005; March 2, 2006; October 9, 2008

.1523 Noncompliance

(a) Failure to Comply with Rules May Result in Suspension

A member who is required to file a report of CLE credits and does not do so or who fails to meet the minimum requirements of these rules, including the payment of duly assessed penalties and attendee fees, may be suspended from the practice of law in the state of North Carolina.

(b) Notice of Failure to Comply

The board shall notify a member who appears to have failed to meet the requirements of these rules that the member will be suspended from the practice of law in this state, unless the member shows good cause in writing why the suspension should not be made or the member shows in writing that he or she has complied with the requirements within the 30-day period after service of the notice. Notice shall be served on the member by mailing a copy thereof by registered or certified mail return receipt requested to the last-known address of the member according to the records of the North Carolina State Bar or such later address as may be known to the person effecting the service. Notice may also be served by personal service by a State Bar investigator or any other person authorized pursuant to Rule 4 of the North Carolina Rules of Civil Procedure to serve process.

(c) Entry of Order of Suspension Upon Failure to Respond to Notice to Show Cause

If a written response attempting to show good cause is not postmarked or received by the board by the last day of the 30-day period after the member was served with the notice to show cause upon the recommendation of the board and the Administrative Committee, the council may enter an order suspending the member from the practice of law. The order shall be entered and served as set forth in Rule .0903(c) of this subchapter.

(d) Procedure Upon Submission of a Timely Response to a Notice to Show Cause

(1) Consideration by the Board

If the member files a timely written response to the notice, the board shall consider the matter at its next regularly scheduled meeting or may delegate consideration of the matter to a duly appointed committee of the board. If

the matter is delegated to a committee of the board and the committee determines that good cause has not been shown, the member may file an appeal to the board. The appeal must be filed within 30 calendar days of the date of the letter notifying the member of the decision of the committee. The board shall review all evidence presented by the member to determine whether good cause has been shown or to determine whether the member has complied with the requirements of these rules within the 30-day period after service of the notice to show cause.

(2) Recommendation of the Board

The board shall determine whether the member has shown good cause why the member should not be suspended. If the board determines that good cause has not been shown or that the member has not shown compliance with these rules within the 30-day period after service of the notice to show cause, then the board shall refer the matter to the Administrative Committee for hearing together with a written recommendation to the Administrative Committee that the member be suspended.

(3) Consideration by and Recommendation of the Administrative Committee

The Administrative Committee shall consider the matter at its next regularly scheduled meeting. The burden of proof shall be upon the member to show cause by clear, cogent, and convincing evidence why the member should not be suspended from the practice of law for the apparent failure to comply with the rules governing the continuing legal education program. Except as set forth above, the procedure for such hearing shall be as set forth in Rule .0903(d)(1) and (2) of this subchapter.

(4) Order of Suspension

Upon the recommendation of the Administrative Committee, the council may determine that the member has not complied with these rules and may enter an order suspending the member from the practice of law. The order shall be entered and served as set forth in Rule .0903(d)(3) of this subchapter.

(e) Late Compliance Fee

Any member to whom a notice to show cause is issued pursuant to paragraph (b) above shall pay a late compliance fee as set forth in Rule .1522(d) of this subchapter; provided, however, upon a showing of good cause as determined by the board as described in paragraph (d)(2) above, the fee may be waived.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711.

Readopted Effective December 8, 1994

Amended March 7, 1996; March 6, 1997; February 3, 2000; October 1, 2003; October 9, 2008

.1524 Reinstatement

(a) Reinstatement Within 30 Days of Service of Suspension Order

A member who is suspended for noncompliance with the rules governing the continuing legal education program may petition the secretary for an order of reinstatement of the member's license at any time up to 30 days after the service of the suspension order upon the member. The secretary shall enter an order reinstating the member to active status upon receipt of a timely written request and satisfactory showing by the member that the member cured the continuing legal education deficiency for which the member was suspended. Such member shall not be required to file a formal reinstatement petition or pay a $250 reinstatement fee.

(b) Procedure for Reinstatement More that 30 Days After Service of the Order of Suspension

Except as noted below, the procedure for reinstatement more than 30 days after service of the order of suspension shall be as set forth in Rule .0904(c) and (d) of this subchapter, and shall be administered by Administrative Committee.

(c) Reinstatement Petition

At any time more than 30 days after service of an order of suspension on a member, a member who has been suspended for noncompliance with the rules governing the continuing legal education program may seek reinstatement by filing a reinstatement petition with the secretary. The secretary shall transmit a copy of the petition to each member of the board. The reinstatement petition shall contain the information and be in the form required by Rule .0904(c) of this subchapter. If not otherwise set forth in the petition, the member shall attach a statement to the petition in which the member shall state with particularity the accredited legal education courses which the member has attended and the number of credit hours obtained in order to cure any continuing legal education deficiency for which the member was suspended.

(d) Reinstatement Fee

In lieu of the $125.00 reinstatement fee required by Rule .0904(c)(4)(A), the petition shall be accompanied by a reinstatement fee payable to the board, in the amount of $250.00.

(e) Determination of Board; Transmission to Administrative Committee

Within 30 days of the filing of the petition for reinstatement with the secretary, the board shall determine whether the deficiency has been cured. The board's written determination and the reinstatement petition shall be transmitted to the secretary within five days of the determination by the board. The secretary shall transmit a copy of the petition and the board's recommendation to each member of the Administrative Committee.

(f) Consideration by Administrative Committee

The Administrative Committee shall consider the reinstatement petition, together with the board's determination, pursuant to the requirements of Rule .0902(c)-(f) of this subchapter.

(g) Hearing Upon Denial of Petition for Reinstatement

The procedure for hearing upon the denial by the Administrative Committee of a petition for reinstatement shall be as provided in Section .1000 of this subchapter.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711.

Readopted Effective December 8, 1994

Amended March 7, 1996; March 6, 1997; February 3, 2000; March 3, 2005

.1525 Reserved

.1526 Effective Date

(a) The effective date of these rules shall be January 1, 1988.

(b) Active members licensed prior to July 1 of any calendar year shall meet the continuing legal education requirements of these rules for such year.

(c) Active members licensed after June 30 of any calendar year must meet the continuing legal education requirements of these rules for the next calendar year.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711.

Readopted Effective December 8, 1994

.1527 Regulations

The following regulations (Section .1600 of the Rules of the North Carolina State Bar) for the continuing legal education program are hereby adopted and shall remain in effect until revised or amended by the board with the approval of the council. The board may adopt other regulations to implement the continuing legal education program with the approval of the council.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711.

Readopted Effective December 8, 1994

Section .1600 Regulations Governing the Administration of the Continuing Legal Education Program

.1601 General Requirements for Course Approval

(a) Approval. CLE activities may be approved upon the written application of a sponsor, other than an accredited sponsor, or of an active member on an individual program basis. An application for such CLE course approval shall meet the following requirements:

(1) If advance approval is requested by a sponsor, the application and supporting documentation, including one substantially complete set of the written materials to be distributed at the course or program, shall be submitted at least 50 days prior to the date on which the course or program is scheduled. If advance approval is requested by an active member, the application need not include a complete set of written materials.

(2) In all other cases, the application and supporting documentation shall be submitted by the sponsor not later than 50 days after the date the course or

program was presented or prior to the end of the calendar year in which the course or program was presented, whichever is earlier. Active members requesting credit must submit the application and supporting documentation within 50 days after the date the course or program was presented or, if the 50 days have elapsed, as soon as practicable after receiving notice from the board that the course accreditation request was not submitted by the sponsor.

(3) The application shall be submitted on a form furnished by the board.

(4) The application shall contain all information requested on the form.

(5) The application shall be accompanied by a course outline or brochure that describes the content, identifies the teachers, lists the time devoted to each topic, and shows each date and location at which the program will be offered.

(6) The application shall include a detailed calculation of the total CLE hours and hours of professional responsibility.

(b) Course Quality and Materials. The application and materials provided shall reflect that the program to be offered meets the requirements of Rule .1519 of this subchapter. Sponsors, including accredited sponsors, and active members seeking credit for an approved activity shall furnish, upon request of the board, a copy of all materials presented and distributed at a CLE course or program. Written materials consisting merely of an outline without citation or explanatory notations generally will not be sufficient for approval. Any sponsor, including an accredited sponsor, who expects to conduct a CLE activity for which suitable written materials will not be made available to all attendees may obtain approval for that activity only by application to the board at least 50 days in advance of the presentation showing why written materials are not suitable or readily available for such a program.

(c) Facilities. Sponsors must provide a facility conductive to learning with sufficient space for taking notes.

(d) Computer-Based CLE: Verification of Attendance. The sponsor of an online course must have a reliable method for recording and verifying attendance. The sponsor of a CD-ROM course must demonstrate that there is a reliable method for the user or the sponsor to record and verify participation in the course. A participant may periodically log on and off of a computer-based CLE course provided the total time spent participating in the course is equal to or exceeds the credit hours assigned to the program. A copy of the record of attendance must be forwarded to the board within 30 days after a member completes his or her participation in the course.

(e) Records. Sponsors, including accredited sponsors, shall within 30 days after the course is concluded

(1) furnish to the board a list in alphabetical order, in an electronic format if available, of the names of all North Carolina attendees and their North Carolina State Bar membership numbers;

(2) remit to the board the appropriate sponsor fee; and, if payment is not received by the board within 30 days after the course is concluded, interest at the legal rate shall be incurred; provided, however, the board may waive such interest upon a showing of good cause by a sponsor; and

(3) furnish to the board a complete set of all written materials distributed to attendees at the course or program.

(f) Announcement. Accredited sponsors and sponsors who have advanced approval for courses may include in their brochures or other course descriptions the information contained in the following illustration:

This course [or seminar or program] has been approved by the Board of Continuing Legal Education of the North Carolina State Bar for continuing legal education credit in the amount of ____ hours, of which ____ hours will also apply in the area of professional responsibility. This course is not sponsored by the board.

(g) Notice. Sponsors not having advanced approval shall make no representation concerning the approval of the course for CLE credit by the board. The board will mail a notice of its decision on CLE activity approval requests within 45 days of their receipt when the request for approval is submitted before the program and within 45 days when the request is submitted after the program. Approval thereof will be deemed if the notice is not timely mailed. This automatic approval will not operate if the sponsor contributes to the delay by failing to provide the complete information requested by the board or if the board timely notifies the sponsor that the matter has been tabled and the reason therefor.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711.

Readopted Effective December 8, 1994

Amended October 1, 2003; March 3, 2005; March 6, 2008; October 7, 2010

.1602 Course Content Requirements

(a) Professional Responsibility Courses on Stress, Substance Abuse, Chemical Dependency, and Debilitating Mental Conditions - Accredited professional responsibility courses on stress, substance abuse, chemical dependency, and debilitating mental conditions shall concentrate on the relationship between stress, substance abuse, chemical dependency, debilitating mental conditions, and a lawyer's professional responsibilities. Such courses may also include (1) education on the prevention, detection, treatment and etiology of stress, substance abuse, chemical dependency, and debilitating mental conditions, and (2) information about assistance for chemically dependent or mentally impaired lawyers available through lawyers' professional organizations. No more than three hours of continuing education credit will be granted to any one such course or segment of a course.

(b) Law School Courses - Courses offered by an ABA accredited law school with respect to which academic credit may be earned may be approved activities. Computation of CLE credit for such courses shall be as prescribed in Rule .1605(a) of this subchapter. No more than 12 CLE hours in any year may be earned by such courses. No credit is available for law school courses attended prior to becoming an active member of the North Carolina State Bar.

(c) Law Practice Management Courses - A CLE accredited course on law practice management must satisfy the accreditation standards set forth in Rule .1519 of this subchapter with the primary objective of increasing the participant's professional competence and proficiency as a lawyer. The subject matter presented in an accredited course on law practice management shall bear a direct relationship to either substantive legal issues in managing a law practice or a lawyer's professional responsibilities, including avoidance of conflicts of interest, protecting confidential client information, supervising subordinate lawyers and nonlawyers, fee arrangements, managing a trust account, ethical legal advertising, and malpractice avoidance. The following are illustrative, non-exclusive examples of subject matter that may earn CLE credit: employment law relating to lawyers and law practice; business law relating to the formation and operation of a law firm; calendars, dockets and tickler systems; conflict screening and avoidance systems; law office disaster planning; handling of client files; communicating with clients; and trust accounting. If appropriate, a law practice management course may qualify for professional responsibility (ethics) CLE credit. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit: marketing; networking/rainmaking; client cultivation; increasing productivity; developing a business plan; improving the profitability of a law practice; selling a law practice; and purchasing office equipment (including computer and accounting systems).

(d) Skills and Training Courses - A course that teaches a skill specific to the practice of law may be accredited for CLE if it satisfies the accreditation standards set forth in Rule .1519 of this subchapter with the primary objective of increasing the participant's professional competence and proficiency as a lawyer. The following are illustrative, non-exclusive examples of subject matter that may earn CLE credit: legal writing; oral argument; courtroom presentation; and legal research. A course that provides general instruction in non-legal skills shall NOT be accredited. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit: learning to use computer hardware, non-legal software, or office equipment; public speaking; speed reading; efficiency training; personal money management or investing; career building; marketing; and general office management techniques.

(e) Activities That Shall Not Be Accredited CLE credit will not be given for general and personal educational activities. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit:

(1) courses within the normal college curriculum such as English, history, social studies, and psychology;

(2) courses that deal with the individual lawyer's human development, such as stress reduction, quality of life, or substance abuse unless a course on substance abuse or mental health satisfies the requirements of Rule .1602(c);

(3) courses designed primarily to sell services or products or to generate greater revenue, such as marketing or advertising (as distinguished from courses dealing with development of law office procedures and management designed to raise the level of service provided to clients).

(f) Service to the Profession Training - A course or segment of a course presented by a bar organization may be granted up to three hours of credit if the bar organization's course trains volunteer attorneys in service to the profession, and if such course or course segment meets the requirements of Rule .1519(2)-(7) and Rule .1601(b), (c), and (g) of this subchapter; if appropriate, up to three hours of professional responsibility credit may be granted for such course or course segment.

(g) In-House CLE and Self-Study. No approval will be provided for in-house CLE or self-study by attorneys, except those programs exempted by the board under Rule .1501(c)(10) of this subchapter or as provided in Rule .1604(e) of this subchapter.

(h) Bar Review/Refresher Course. Courses designed to review or refresh recent law school graduates or attorneys in preparation for any bar exam shall not be approved for CLE credit.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711.

Readopted Effective December 8, 1994

Amended March 6, 1997; March 5, 1998; March 3, 1999; March 1, 2001; June 7, 2001; March 3, 2005; March 2, 2006; March 8, 2007; October 9, 2008

.1603 Accredited Sponsors

In order to receive designation as an accredited sponsor of courses, programs or other continuing legal education activities under Rule .1520(a) of this subchapter, the application of the sponsor must meet the following requirements:

(1) The application for accredited sponsor status shall be submitted on a form furnished by the board.

(2) The application shall contain all information requested on the form.

(3) The application shall be accompanied by course outlines or brochures that describe the content, identify the instructors, list the time devoted to each topic, show each date and location at which three programs have been sponsored in each of the last three consecutive years, and enclose the actual course materials.

(4) The application shall include a detailed calculation of the total CLE hours specified in each of the programs sponsored by the organization.

(5) The application shall reflect that the previous programs offered by the organization in continuing legal education have been of consistently high quality and would otherwise meet the standards set forth in Rule .1519 of this subchapter.

(6) Notwithstanding the provisions of Rule .1603 (3),(4) and(5) above, any law school which has been approved by the North Carolina State Bar for purposes of qualifying its graduates for the North Carolina bar examination, may become an accredited sponsor upon application to the board.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711.

Readopted Effective December 8, 1994

.1604 Accreditation of Prerecorded, Simultaneous Broadcast, and Computer-Based Programs

(a) Presentation Including Prerecorded Material. An active member may receive credit for attendance at, or participation in, a presentation where prerecorded material is used. Prerecorded material may be either in a video or an audio format.

(b) Simultaneous Broadcast. An active member may receive credit for participation in a live presentation which is simultaneously broadcast by telephone, satellite, or video conferencing equipment. The member may participate in the presentation by listening to or viewing the broadcast from a location that is remote from the origin of the broadcast. The broadcast may include prerecorded material provided it also includes a live question and answer session with the presenter.

(c) Accreditation Requirements. A member attending a prerecorded presentation is entitled to credit hours if

(1) the live presentation or the presentation from which the program is recorded would, if attended by an active member, be an accredited course; and

(2) all other conditions imposed by the rules in Section .1600 of this subchapter, or by the board in advance, are met.

(d) Minimum Registration and Verification of Attendance. A minimum of three active members must register for the presentation of a prerecorded program. This requirement does not apply to the presentation of a live broadcast by telephone, satellite, or video conferencing equipment. Attendance at a prerecorded or simultaneously broadcast (by telephone, satellite, or video conferencing) program must be verified by (1) the sponsor's report of attendance or (2) the execution of an affidavit of attendance by the participant.

(e) Computer-Based CLE. Effective for courses attended on or after July 1, 2001, a member may receive up to four (4) hours of credit annually for participation in a course on CD-ROM or on-line. A CD-ROM course is an educational seminar on a compact disk that is accessed through the CD-ROM drive of the user's personal computer. An on-line course is an educational seminar available on a provider's website reached via the Internet.

(1) A member may apply up to four credit hours of computer-based CLE to a CLE deficit from a preceding calendar year. Any computer-based CLE credit hours applied to a deficit from a preceding year will be included in calculating the maximum of four (4) hours of computer-based CLE allowed in the preceding calendar year. A member may carry over to the next calendar year no more than four credit hours of computer-based CLE pursuant to Rule .1518(c) of this subchapter. Any credit hours carried-over pursuant to Rule .1518(c) of this subchapter will not be included in calculating the four (4) hours of computer-based CLE allowed in any one calendar year.

(2) To be accredited, a computer-based CLE course must meet all of the conditions imposed by the rules in Section .1600 of this subchapter, or by the board in advance, except where otherwise noted, and be interactive, permitting the participant to communicate, via telephone, electronic mail, or a website bulletin board, with the presenter and/or other participants.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711.

Readopted Effective December 8, 1994

Amended March 6, 1997; March 3, 2005; May 4, 2005; March 2, 2006; March 6, 2008

.1605 Computation of Credit

(a) Computation Formula - CLE and professional responsibility hours shall be computed by the following formula:

Sum of the total minutes of actual instruction / 60= Total Hours

For example, actual instruction totaling 195 minutes would equal 3.25 hours toward CLE.

(b) Actual Instruction - Only actual education shall be included in computing the total hours of actual instruction. The following shall not be included:

(1) introductory remarks;

(2) breaks;

(3) business meetings;

(4) speeches in connection with banquets or other events which are primarily social in nature;

(5) question and answer sessions at a ratio in excess of 15 minutes per CLE hour and programs less than 30 minutes in length provided, however, that the limitation on question and answer sessions shall not limit the length of time that may be devoted to participatory CLE.

(c) Teaching - Teaching - As a contribution to professionalism, credit may be earned for teaching in an approved continuing legal education activity or a continuing paralegal education activity held in North Carolina and approved pursuant to Section .0200 of Subchapter G of these rules. Presentations accompanied by thorough, high quality, readable, and carefully prepared written materials will qualify for CLE credit on the basis of three hours of credit for each thirty minutes of presentation. Repeat presentations qualify for one-half of the credits available for the initial presentation. For example, an initial presentation of 45 minutes would qualify for 4.5 hours of credit.

(d) Teaching Law Courses

(1) Law School Courses. If a member is not a full-time teacher at a law school in North Carolina who is eligible for the exemption in Rule .1517(b) of this subchapter, the member may earn CLE credit for teaching courses at an ABA accredited law school. A member may also earn CLE credit by teaching courses at a law school licensed by the Board of Governors of the University of North Carolina, provided the law school is actively seeking accreditation from the ABA. If ABA accreditation is not obtained by a law school so licensed within three years of the commencement of classes, CLE credit will no longer be granted for teaching courses at the school.

(2) Courses at Paralegal Schools or Programs. Effective January 1, 2006, a member may earn CLE credit by teaching paralegal or substantive law courses at an ABA approved paralegal school or program.

(3) Credit Hours. Credit for teaching courses described in Rule .1605(d)(1) and (2) above may be earned without regard to whether the course is taught on-line or in a classroom. Credit will be calculated according to the following formula:

3.5 Hours of CLE credit for every quarter hour of credit assigned to the course by the educational institution, or

5.0 Hours of CLE credit for every semester hour of credit assigned to the course by the educational institution.

(For example: a 3-semester hour course will qualify for 15 hours of CLE credit).

(4) Other Requirements. The member shall also complete the requirements set forth in Rule .1518(b) of this subchapter.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711. Readopted Effective December 8, 1994

Amended March 3, 1999; October 1, 2003; November 16, 2006

.1606 Fees

(a) Sponsor Fee - The sponsor fee, a charge paid directly by the sponsor, shall be paid by all sponsors of approved activities presented in North Carolina and by accredited sponsors located in North Carolina for approved activities wherever presented, except that no sponsor fee is required where approved activities are offered without charge to attendees. In any other instance, payment of the fee by the sponsor is optional. The amount of the fee, per approved CLE hour per active member of the North Carolina State Bar in attendance, is $3.00. This amount shall be allocated as follows: $1.25 to the Board of Continuing Legal Education to administer the CLE program; $1.00 to the Chief Justice's Commission on Professionalism; $.050 to the North Carolina Equal Access to Justice Commission; and $0.25 to the State Bar to administer the funds distributed to the commissions. The fee is computed as shown in the following formula and example which assumes a 6-hour course attended by 100 North Carolina lawyers seeking CLE credit:

Fee: $3.00 x Total Approved CLE Hours (6) x Number of NC Attendees (100) = Total Sponsor Fee($1800)

(b) Attendee Fee - The attendee fee is paid by the North Carolina attorney who requests credit for a program for which no sponsor fee was paid. An attorney will be invoiced for any attendees fees owed following the submission of the attorney's annual report form pursuant to Rule .1522(a) of this subchapter. Payment shall be remitted within 30 (thirty) days of the date of the invoice. The amount of the fee, per approved CLE hour for which the attorney claims credit, $3.00. This amount shall be allocated as follows: $1.25 to the Board of Continuing Legal Education to administer the CLE program; $1.00 to the Chief Justice's Commission on Professionalism; $.050 to the North Carolina Equal Access to Justice Commission; and $0.25 to the State Bar to administer the funds distributed to the commissions.

It is computed as shown in the following formula and example which assumes that the attorney attended an activity approved for 3 hours of CLE credit:

Fee: $3.00 x Total Approved CLE hours (3.0) = Total Attendee Fee ($9.00)

(c) Fee Review - The board will review the level of the fee at least annually and adjust it as necessary to maintain adequate finances for prudent operation of the board in a nonprofit manner. The council shall annually review the assessments for the Chief Justice's Commission on Professionalism and the North Carolina Equal Access to Justice Commission and adjust them as necessary to maintain adequate finances for the operation of the commissions.

(d) Uniform Application and Financial Responsibility - The fee shall be applied uniformly without exceptions or other preferential treatment for a sponsor or attendee.

The board shall make reasonable efforts to collect the sponsor fee from the sponsor of a CLE program when appropriate under Rule .1606(a) above.

However, whenever a sponsor fee is not paid by the sponsor of a program, regardless of the reason, the lawyer requesting CLE credit for the program shall be financially responsible for the fee.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711.

Readopted Effective December 8, 1994

Amended December 30, 1998; October 1, 2003; February 5, 2009; October 8, 2009

.1607 Reserved

.1608 Reserved

.1609 Reserved

.1610 Reserved

.1611 Reserved

Section .1700 The Plan of Legal Specialization

.1701 Purpose

The purpose of this plan of certified legal specialization is to assist in the delivery of legal services to the public by identifying to the public those lawyers who have demonstrated special knowledge, skill, and proficiency in a specific field, so that the public can more closely match its needs with available services; and to improve the competency of the bar by establishing an additional incentive for lawyers to participate in continuing legal education and meet the other requirements of specialization.

History Note: Statutory Authority G.S. 84-23

Readopted Effective December 8, 1994

.1702 Jurisdiction: Authority

The Council of the North Carolina State Bar (the council) with the approval of the Supreme Court of North Carolina hereby establishes the Board of Legal Specialization (board) as a standing committee of the council, which board shall be the authority having jurisdiction under state law over the subject of specialization of lawyers.

History Note: Statutory Authority G.S. 84-23

Readopted Effective December 8, 1994

.1703 Operational Responsibility

The responsibility for operating the specialization program rests with the board, subject to the statutes governing the practice of law, the authority of the council and the rules of governance of the board.

History Note: Statutory Authority G.S. 84-23

Readopted Effective December 8, 1994

.1704 Size of Board

The board shall have nine members, six of whom must be attorneys in good standing and authorized to practice law in the state of North Carolina. The lawyer members of the board shall be representative of the legal profession and shall include lawyers who are in general practice as well as those who specialize.

History Note: Statutory Authority G.S. 84-23

Readopted Effective December 8, 1994

.1705 Lay Participation

The board shall have three members who are not licensed attorneys.

History Note: Statutory Authority G.S. 84-23

Readopted Effective December 8, 1994

.1706 Appointment of Members; When; Removal

The members of the board shall be appointed by the council. The first members of the board shall be appointed as of the quarterly meeting of the council following the creation of the board. Thereafter, members shall be appointed annually as of the same quarterly meeting. Vacancies occurring by reason of death, resignation, or removal shall be filled by appointment of the council at the next quarterly meeting following the event giving rise to the vacancy, and the person so appointed shall serve for the balance of the vacated term. Any member of the board may be removed at any time by an affirmative vote of a majority of the members of the council in session at a regularly called meeting.

History Note: Statutory Authority G.S. 84-23

Readopted Effective December 8, 1994

.1707 Term of Office

Each member who is appointed to the board shall serve for a term of three years beginning as of the first day of the month following the date on which the appointment is made by the council. See, however, Rule .1708 of this subchapter.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.1708 Staggered Terms

It is intended that members of the board shall be elected to staggered terms such that three members are appointed in each year. Of the initial board, three members (two lawyers and one nonlawyer) shall be elected to terms of one year; three members (two lawyers and one nonlawyer) shall be elected to terms of two years; and three members (two lawyers and one nonlawyer) shall be elected to terms of three years. Thereafter, three members (two lawyers and one nonlawyer) shall be elected in each year.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.1709 Succession

Each member of the board shall be entitled to serve for one full three-year term and to succeed himself or herself for one additional three-year term. Thereafter, no person may be reappointed without having been off of the board for at least three years: provided, however, that any member who is designated chairperson may serve one additional three-year term in that capacity.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994
Amended October 9, 2008

.1710 Appointment of Chairperson

The chairperson of the board shall be appointed from time to time as necessary by the council from among the lawyer members of the board. The term of such individual as chairperson shall be one year. The chairperson may be reappointed thereafter during his or her tenure on the board. The chairperson shall preside at all meetings of the board, shall prepare and present to the council the annual report of the board, and generally shall represent the board in its dealings with the public.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.1711 Appointment of Vice-Chairperson

The vice-chairperson of the board shall be appointed from time to time as necessary by the council from among the lawyer members of the board. The term of such individual as vice-chairperson shall be one year. The vice-chairperson may be reappointed thereafter during his or her tenure on the board. The vice-chairperson shall preside at and represent the board in the absence of the chairperson and shall perform such other duties as may be assigned to him or her by the chairperson or by the board.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.1712 Source of Funds

Funding for the program carried out by the board shall come from such application fees, examination fees, course accreditation fees, annual fees or recertification fees as the board, with the approval of the council, may establish.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.1713 Fiscal Responsibility

All funds of the board shall be considered funds of the North Carolina State Bar and shall be administered and disbursed accordingly.

(a) Maintenance of Accounts: Audit - The North Carolina State Bar shall maintain a separate account for funds of the board such that such funds and expenditures therefrom can be readily identified. The accounts of the board shall be audited on an annual basis in connection with the audits of the North Carolina State Bar.

(b) Investment Criteria - The funds of the board shall be handled, invested and reinvested in accordance with investment policies adopted by the council for the handling of dues, rents and other revenues received by the North Carolina State Bar in carrying out its official duties.

(c) Disbursement - Disbursement of funds of the board shall be made by or under the direction of the secretary-treasurer of the North Carolina State Bar.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.1714 Meetings

The annual meeting of the board shall be held in October of each year in connection with the annual meeting of the North Carolina State Bar. The board by resolution may set regular meeting dates and places. Special meetings of the board may be called at any time upon notice given by the chairperson, the vice-chairperson or any two members of the board. Notice of meeting shall be given at least two days prior to the meeting by mail, telegram, facsimile transmission, or telephone. A quorum of the board for conducting its official business shall be four or more of the members serving at the time of the meeting.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.1715 Annual Report

The board shall prepare at least annually a report of its activities and shall present same to the council one month prior to its annual meeting.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.1716 Powers and Duties of the Board

Subject to the general jurisdiction of the council and the North Carolina Supreme Court, the board shall have jurisdiction of all matters pertaining to regulation of certification of specialists in the practice of law and shall have the power and duty

(1) to administer the plan;

(2) subject to the approval of the council and the Supreme Court, to designate areas in which certificates of specialty may be granted and define the scope and limits of such specialities and to provide procedures for the achievement of these purposes;

(3) to appoint, supervise, act on the recommendations of and consult with specialty committees as hereinafter identified;

(4) to make and publish standards for the certification of specialists, upon the board's own initiative or upon consideration of recommendations made by the specialty committees, such standards to be designed to produce a uniform level of competence among the various specialties in accordance with the nature of the specialties;

(5) to certify specialists or deny, suspend or revoke the certification of specialists upon the board's own initiative, upon recommendations made by the specialty committees or upon requests for review of recommendations made by the specialty committees;

(6) to establish and publish procedures, rules, regulations, and bylaws to implement this plan;

(7) to propose and request the council to make amendments to this plan whenever appropriate;

(8) to cooperate with other boards or agencies in enforcing standards of professional conduct and to report apparent violations of the Revised Rules of Professional Conduct to the appropriate disciplinary authority;

(9) to evaluate and approve, or disapprove, any and all continuing legal education courses, or educational alternatives, for the purpose of meeting the continuing legal education requirements established by the board for the certification of specialists and in connection therewith to determine the specialties for which credit shall be given and the number of hours of credit to be given in cooperation with the providers of continuing legal education; to determine whether and what credit is to be allowed for educational alternatives, including other methods of legal education, teaching, writing and the like; to issue rules and regulations for obtaining approval of continuing legal education courses and educational alternatives; to publish or cooperate with others in publishing current lists of approved continuing legal education courses and educational alternatives; and to encourage and assist law schools, organizations providing continuing legal education, local bar associations and other groups engaged in continuing legal education to offer and maintain programs of continuing legal education designed to develop, enhance and maintain the skill and competence of legal specialists;

(10) to cooperate with other organizations, boards, and agencies engaged in the recognition of legal specialists or concerned with the topic of legal specialization including, but not limited to, utilizing appropriate and qualified organizations that are ABA accredited, to prepare and administer the written specialty examinations for specialties based predominantly on federal law;

(11) notwithstanding any conflicting provision of the certification standards for any area of specialty, to direct any of the specialty committees not to administer a specialty examination if, in the judgment of the board, there are insufficient applicants or such would otherwise not be in the best interest of the specialization program.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994
Amended November 16, 2006

.1717 Retained Jurisdiction of the Council

The council retains jurisdiction with respect to the following matters:

(1) upon recommendation of the board, establishing areas in which certificates of specialty may be granted;

(2) amending this plan;

(3) hearing appeals taken from actions of the board;

(4) establishing or approving fees to be charged in connection with the plan;

(5) regulating attorney advertisements of specialization under the Revised Rules of Professional Conduct.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.1718 Privileges Conferred and Limitations Imposed

The board in the implementation of this plan shall not alter the following privileges and responsibilities of certified specialists and other lawyers.

(1) No standard shall be approved which shall in any way limit the right of a certified specialist to practice in all fields of law. Subject to Rule 1.1 of the Revised Rules of Professional Conduct, any lawyer, alone or in association with any other lawyer, shall have the right to practice in all fields of law, even though he or she is certified as a specialist in a particular field of law.

(2) No lawyer shall be required to be certified as a specialist in order to practice in the field of law covered by that specialty. Subject to Rule 1.1 of the North Carolina Revised Rules of Professional Conduct, any lawyer, alone or in association with any other lawyer, shall have the right to practice in any field of law, or advertise his or her availability to practice in any field of law consistent with Rule 7.1 of the Revised Rules of Professional Conduct, even though he or she is not certified as a specialist in that field.

(3) All requirements for and all benefits to be derived from certification as a specialist are individual and may not be fulfilled by nor attributed to the law firm of which the specialist may be a member.

(4) Participation in the program shall be on a completely voluntary basis.

(5) A lawyer may be certified as a specialist in no more than two fields of law.

(6) When a client is referred by another lawyer to a lawyer who is a recognized specialist under this plan on a matter within the specialist's field of law, such specialist shall not take advantage of the referral to enlarge the scope of his or her representation and, consonant with any requirements of the Revised Rules of Professional Conduct, such specialist shall not enlarge the scope of representation of a referred client outside the area of the specialty field.

(7) Any lawyer certified as a specialist under this plan shall be entitled to advertise that he or she is a "Board Certified Specialist" in his or her specialty to the extent permitted by the Revised Rules of Professional Conduct.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.1719 Specialty Committees

(a) The board shall establish a separate specialty committee for each specialty in which specialists are to be certified. Each specialty committee shall be composed of seven members appointed by the board, one of whom shall be designated annually by the chairperson of the board as chairperson of the specialty committee. Members of each specialty committee shall be lawyers licensed and currently in good standing to practice law in this state who, in the judgment of the board, are competent in the field of law to be covered by the specialty. Members shall hold office for three years, except those members initially appointed who shall serve as hereinafter designated. Members shall be appointed by the board to staggered terms of office and the initial appointees shall serve as follows: two shall serve for one year after appointment; two shall serve for two years after appointment; and three shall serve for three years after appointment. Appointment by the board to a vacancy shall be for the remaining term of the member leaving the specialty committee. All members shall be eligible for reappointment to not more than one additional three-year term after having served one full three-year term, provided, however, that the board may reappoint the chairperson of a committee to a third three-year term if the board determines that the reappointment is in the best interest of the specialization program. Meetings of the specialty committee shall be held at regular intervals at such times, places and upon such notices as the specialty committee may from time to time prescribe or upon direction of the board.

(b) Each specialty committee shall advise and assist the board in carrying out the board's objectives and in the implementation and regulation of this plan in that specialty. Each specialty committee shall advise and make recommendations to the board as to standards for the specialty and the certification of individual specialists in that specialty. Each specialty committee shall be charged with actively administering the plan in its specialty and with respect to that specialty shall

(1) after public hearing on due notice, recommend to the board reasonable and nondiscriminatory standards applicable to that specialty;

(2) make recommendations to the board for certification, continued certification, denial, suspension, or revocation of certification of specialists and for procedures with respect thereto;

(3) administer procedures established by the board for applications for certification and continued certification as a specialist and for denial, suspension, or revocation of such certification;

(4) administer examinations and other testing procedures, if applicable, investigate references of applicants and, if deemed advisable, seek additional information regarding applicants for certification or continued certification as specialists;

(5) make recommendations to the board concerning the approval of and credit to be allowed for continuing legal education courses, or educational alternatives, in the specialty;

(6) perform such other duties and make such other recommendations as may be delegated to or requested of the specialty committee by the board.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994
Amended November 7, 1996

.1720 Minimum Standards for Certification of Specialists

(a) To qualify for certification as a specialist, a lawyer applicant must pay any required fee, comply with the following minimum standards, and meet any other standards established by the board for the particular area of specialty.

(1) The applicant must be licensed in a jurisdiction of the United States for at least five years immediately preceding his or her application and must be licensed in North Carolina for at least three years immediately preceding his or her application. The applicant must be currently in good standing to practice law in this state.

(2) The applicant must make a satisfactory showing, as determined by the board after advice from the appropriate specialty committee, of substantial involvement in the specialty during the five years immediately preceding his or her application according to objective and verifiable standards. Such substantial involvement shall be defined as to each specialty from a consideration of its nature, complexity, and differences from other fields and from consideration of the kind and extent of effort and experience necessary to demonstrate competence in that specialty. It is a measurement of actual experience within the particular specialty according to any of several standards. It may be measured by the time spent on legal work within the areas of the specialty, the number or type of matters handled within a certain period of time or any combination of these or other appropriate factors. However, within each specialty, experience requirements should be measured by objective standards. In no event should they be either so restrictive as to unduly limit certification of lawyers as specialists or so lax as to make the requirement of substantial involvement meaningless as a criterion of competence. Substantial involvement may vary from specialty to specialty, but, if measured on a time-spent basis, in no event shall the time spent in practice in the specialty be less than

25 percent of the total practice of a lawyer engaged in a normal full-time practice. Reasonable and uniform practice equivalents may be established including, but not limited to, successful pursuit of an advance educational degree, teaching, judicial, government, or corporate legal experience.

(3) The applicant must make a satisfactory showing, as determined by the board after advice from the appropriate specialty committee, of continuing legal education in the specialty accredited by the board for the specialty, the minimum being an average of 12 hours of credit for continuing legal education, or its equivalent, for each of the three years immediately preceding application. Upon establishment of a new specialty, this standard may be satisfied in such manner as the board, upon advice from the appropriate specialty committee, may prescribe or may be waived if, and to the extent, accreditable continuing legal education courses have not been available during the three years immediately preceding establishment of the specialty.

(4) The applicant must make a satisfactory showing, as determined by the board after advice from the appropriate specialty committee, of qualification in the specialty through peer review by providing, as references, the names of at least five lawyers, all of whom are licensed and currently in good standing to practice law in this state, or in any state, or judges, who are familiar with the competence and qualification of the applicant as a specialist. None of the references may be persons related to the applicant or, at the time of application, a partner of or otherwise associated with the applicant in the practice of law. The applicant by his or her application consents to confidential inquiry by the board or appropriate disciplinary body and other persons regarding the applicants competence and qualifications to be certified as a specialist.

(5) The applicant must achieve a satisfactory score on a written examination designed to test the applicant's knowledge and ability in the specialty for which certification is applied. The examination must be applied uniformly to all applicants within each specialty area. The board shall assure that the contents and grading of the examination are designed to produce a uniform level of competence among the various specialties.

(b) All matters concerning the qualification of an applicant for certification, including, but not limited to, applications, references, tests and test scores, files, reports, investigations, hearings, findings, recommendations, and adverse determinations shall be confidential so far as is consistent with the effective administration of this plan, fairness to the applicant and due process of law.

(c) The board may adopt uniform rules waiving the requirements of Rules .1720(a)(4) and(5) above for members of a specialty committee at the time the initial written examination for that specialty is given and permitting said members to file applications to become a board certified specialist in that specialty upon compliance with all other required minimum standards for certification of specialists.

(d) Upon written request of the applicant and with the recommendation of the appropriate specialty committee, the board may for good cause shown waive strict compliance with the criteria relating to substantial involvement, continuing legal education, or peer review, as those requirements are set forth in the standards for certification for specialization. However, there shall be no waiver of the requirements that the applicant pass a written examination and be licensed to practice law in North Carolina for five years preceding the application.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994
Amended March 3, 2005

.1721 Minimum Standards for Continued Certification of Specialists

(a) The period of certification as a specialist shall be five years. During such period the board or appropriate specialty committee may require evidence from the specialist of his or her continued qualification for certification as a specialist, and the specialist must consent to inquiry by the board, or appropriate specialty committee of lawyers and judges, the appropriate disciplinary body, or others in the community regarding the specialist's continued competence and qualification to be certified as a specialist. Application for and approval of continued certification as a specialist shall be required prior to the end of each five-year period. To qualify for continued certification as a specialist, a lawyer applicant must pay any required fee, must demonstrate to the board with respect to the specialty both continued knowledge of the law of this state and continued competence and must comply with the following minimum standards.

(1) The specialist must make a satisfactory showing, as determined by the board after advice from the appropriate specialty committee, of substantial involvement (which shall be determined in accordance with the principles set forth in Rule .1720(a)(2) of this subchapter) in the specialty during the entire period of certification as a specialist.

(2) The specialist must make a satisfactory showing, as determined by the board after advice from the appropriate specialty committee, of continuing legal education accredited by the board for the specialty during the period of certification as a specialist, the minimum being an average of l2 hours of credit for continuing legal education, or its equivalent, for each year during the entire period of certification as a specialist.

(3) The specialist must comply with the requirements set forth in Rules .1720(a)(1) and (4) of this subchapter.

(b) Upon written request of the applicant and with the recommendation of the appropriate specialty committee, the board may for good cause shown waive strict compliance with the criteria relating to substantial involvement, continuing legal education, or peer review, as those requirements are set forth in the standards for continued certification. Before or after taking a continuing legal education course that is not in the specialty or a related field, a specialist may petition the board to approve the program as satisfying the continuing legal education criteria for recertification. The petition shall show the relevancy of the program to the specialist's proficiency as a specialist, and be referred to the specialty committee for its recommendation prior to a decision by the board.

(c) After the period of initial certification, a specialist may request, in advance and in writing, approval from the board for a waiver of one year of the substantial involvement necessary to satisfy the standards for the specialist's next recertification. The specialist may request a waiver of one year of substantial involvement for every five years that the specialist has met the substantial involvement standard beginning with the period of initial certification. However, none of the years for which a waiver is requested may be consecutive. When a waiver of the substantial involvement requirement is granted, the specialist must satisfy all of the other requirements for recertification.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994
Amended March 6, 2002; February 5, 2009

.1722 Establishment of Additional Standards

The board may establish, on its own initiative or upon the specialty committee's recommendation, additional or more stringent standards for certification than those provided in Rules .1720 and .172l of this subchapter. Additional standards or requirements established under this rule need not be the same for initial certification and continued certification as a specialist. It is the intent of the plan that all requirements for certification or recertification in any area of specialty shall be no more or less stringent than the requirements in any other area of specialty.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.1723 Revocation or Suspension of Certification as a Specialist

(a) Automatic Revocation. The board shall revoke its certification of a lawyer as a specialist if the lawyer is disbarred or receives a disciplinary suspension from the North Carolina State Bar, a North Carolina court of law, or, if the lawyer is licensed in another jurisdiction in the United States, from a court of law or the regulatory authority of that jurisdiction. Revocation shall be automatic without regard for any stay of the suspension period granted by the disciplinary authority. This provision shall apply to discipline received on or after the effective date of this provision.

(b) Discretionary Revocation or Suspension. The board may revoke its certification of a lawyer as a specialist if the specialty is terminated or may suspend or revoke such certification if it is determined, upon the board's own initiative or upon recommendation of the appropriate specialty committee and after hearing before the board as provided in Rule .1802, that

(1) the certification of the lawyer as a specialist was made contrary to the rules and regulations of the board;

(2) the lawyer certified as a specialist made a false representation, omission or

misstatement of material fact to the board or appropriate specialty committee;
(3) the lawyer certified as a specialist has failed to abide by all rules and regulations promulgated by the board;
(4) the lawyer certified as a specialist has failed to pay the fees required;
(5) the lawyer certified as a specialist no longer meets the standards established by the board for the certification of specialists;
(6) the lawyer certified as a specialist received public discipline from the North Carolina State Bar on or after the effective date of this provision, other than suspension or disbarment from practice and the board finds that the conduct for which the professional discipline was received reflects adversely on the specialization program and the lawyer's qualification as a specialist; or
(7) the lawyer certified as a specialist was sanctioned or received public discipline on or after the effective date of this provision from any state or federal court or, if the lawyer is licensed in another jurisdiction, from the regulatory authority of that jurisdiction in the United States, and the board finds that the conduct for which the sanctions or professional discipline was received reflects adversely on the specialization program and the lawyer's qualification as a specialist.

(c) Report to Board. A lawyer certified as a specialist has a duty to inform the board promptly of any fact or circumstance described in Rules .1723(a) and (b) above.

(d) Reinstatement. If the board revokes its certification of a lawyer as a specialist, the lawyer cannot again be certified as a specialist unless he or she so qualifies upon application made as if for initial certification as a specialist and upon such other conditions as the board may prescribe. If the board suspends certification of a lawyer as a specialist, such certification cannot be reinstated except upon the lawyer's application therefor and compliance with such conditions and requirements as the board may prescribe.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994
Amended February 5, 2004

.1724 Right to Hearing and Appeal to Council

A lawyer who is denied certification or continued certification as a specialist or whose certification is suspended or revoked shall have the right to a hearing before the board and, thereafter, the right to appeal the ruling made thereon by the board to the council under such rules and regulations as the board and council may prescribe. (*See* Section .1800 of this subchapter.)

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.1725 Areas of Specialty

There are hereby recognized the following specialties:
(1) bankruptcy law
(a) consumer bankruptcy law
(b) business bankruptcy law
(2) estate planning and probate law
(3) real property law
(a) real property - residential
(b) real property - business, commercial, and industrial
(4) family law
(5) criminal law
(a) criminal appellate practice
(b) state criminal law
(6) immigration law.
(7) workers' compensation law
(8) Social Security disability law
(9) elder law

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994
Amended March 2, 2006; February 5, 2009

.1726 Certification Standards of the Specialties of Bankruptcy Law, Estate Planning and Probate Law, Real Property Law, Family Law, and Criminal Law

Previous decisions approving the certification standards for the areas of specialty listed above are hereby reaffirmed.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994
Amended February 27, 2003

Section .1800 Hearing and Appeal Rules of the Board of Legal Specialization

.1801 Reconsideration of Applications, Failure of Written Examinations and Appeals

(a) Applications Incomplete and/or Applicants Not in Compliance with Standards for Certification

(1) Incomplete Applications - The executive director of the North Carolina State Bar Board of Legal Specialization (the board) will review every application to determine if the application is complete. The applicant will be notified of the incompleteness of his or her application. The applicant must submit the completed application within 21 days of the date of mailing of the notice. If the applicant fails to provide the required information for the application during the requisite time period, the executive director will refer the application to the specialty committee for review.
(2) Applicant Not in Compliance - The executive director shall refer to the specialty committee for review any application which appears complete on its face, but which does not satisfactorily demonstrate compliance with the standards for certification in the specialty area for which certification is sought.
(3) Specialty Committee Action - The specialty committee shall review the incomplete applications and the applications not in compliance with the standards for certification. After reviewing the applications, the specialty committee shall recommend to the board the acceptance or rejection of the applications. The specialty committee shall notify the board of its recommendations in writing and the reason for any negative recommendation must be specified. The specialty committee must complete the above process within 14 days of receiving the applications.
(4) Notification to Applicant of the Specialty Committee's Action - The executive director shall promptly notify the applicant in writing of the specialty committee's recommendation of rejection of the application. The notification must specify the reason for the recommendation of rejection of the application. In addition, the notification shall inform the applicant of his or her right to petition the board for review of the application or request a hearing before the board.
(5) Petition for Review by the Board - Within 21 days of the mailing of the notice from the executive director that an application has been recommended for rejection by the specialty committee, the applicant may petition the board for review. The petition may be informal (e.g., by letter), but should include the date on which notice of the recommendation of rejection was received and the reasons for which the applicant believes the specialty committee's recommendation of rejection should not be accepted.
(6) Review of Petition by the Board - A three-member panel of the board, to be appointed by the chairperson of the board, shall review and take action by a majority of the panel upon the petition and notify the applicant of the board's decision. The notification shall inform the applicant of his or her right to appeal the decision to the North Carolina State Bar Council (the council) if the board's action is unfavorable to the applicant.
(7) Request for Hearing - In lieu of a petition for review, an applicant may request a hearing before the board. The applicant shall notify the board through its executive director in writing of such request for a hearing within 21 days of the mailing of the notice regarding the specialty committee's recommendation of rejection of the application. The applicant shall set forth the grounds for the hearing before the board. In such a request, the applicant shall list the names of prospective witnesses and identify documentation and other evidence to be introduced at the hearing before the board. The applicant shall be notified of the board's decision, and if the board's decision is unfavorable to the applicant, the applicant will be notified of his or her right to appeal the board's decision to the council.
(8) Hearing Procedures
(A) Notice - Time and Place of Hearing - The chairperson of the board

shall fix the time and place of the hearing as soon as practicable after the applicant's request for hearing is received. The applicant shall be notified of the hearing date. Such notice shall be given to the applicant at least 10 days prior to the time fixed for the hearing.

(B) Quorum - A panel of three members of the board, as appointed by the chairperson, shall be necessary to conduct the hearing with the majority of those in attendance necessary to decide upon the matter.

(C) Representation by Counsel and Witnesses - The applicant may be represented by counsel or represent himself or herself at such hearing. The applicant may offer witnesses and documents and may cross-examine any witness.

(D) Written Briefs - The applicant is urged to submit a written brief (in quadruplicate) 10 days prior to the hearing to the executive director for distribution to the panel in support of his or her position. However, written briefs are not required.

(E) Depositions - Should the applicant or executive director desire to take a deposition prior to the board hearing of any voluntary witness who cannot attend the board hearing, such intention to take, and request to take, the deposition of a witness may be applied for in writing to the chairperson of the board together with a written consent signed by the potential witness that he or she will give a deposition for one party and a statement to the effect that the witness cannot attend the hearing along with the reason for such unavailability. The party seeking to take the deposition of a witness shall state in detail as to what the witness is expected to testify. If the chairperson is satisfied that such deposition from a possible witness will be relevant to the issue in question before the board, then the chairperson will authorize said taking of the deposition. The chairperson will also designate the executive director or a member of the specialty committee to be present at the deposition. The deposition may be taken orally or by video. Any refusal of the taking of the deposition by the chairperson shall be reviewed by the board at the request of the applicant. The cost connected with taking the deposition shall be borne by the party requesting the deposition.

(F) Continuances - Motions for continuance of the hearing should be made to the chairperson of the board and such motions will be granted or denied by the chairperson of the board.

(G) Burden of Proof - Preponderance of the Evidence - The panel of the board shall apply the preponderance of the evidence rule in determining whether or not to accept the application for certification. The burden of proof is upon the applicant.

(H) Conduct of Hearings: Rights of Parties -

(i) Hearings shall be reported by a certified court reporter. The applicant shall pay the costs associated with obtaining the court reporter's services for the hearing. The applicant shall pay the costs of the transcript and shall arrange for the preparation of the transcript with the court reporter. The applicant shall be taxed with all other costs of the hearing, but such costs shall not include any compensation to the members of the board before whom the hearing is conducted. The board in its discretion may refund to the applicant all or some portion of the necessary costs incurred as a result of the hearing.

(ii) The applicant may retain counsel at all stages of the investigation and at all meetings. The applicant and his or her counsel shall have the right to attend all hearings.

(iii) Oral evidence at hearings shall be taken only on oath or affirmation. The applicant shall have the right to testify unless he or she specifically waives such right or fails to appear at the hearing. If the applicant does not testify on his or her behalf, the applicant may be called and examined by the panel of the board, the executive director, and any member of the specialty committee. The applicant's failure to appear at the hearing ordered by the board, after receipt of written notice, shall constitute a waiver of the applicant's right to a hearing before the board.

(iv) At any hearing, the panel of the board, the executive director, any member of the appropriate specialty committee, and the applicant shall have these rights:

(a) to call and examine witnesses;

(b) to offer exhibits;

(c) to cross-examine witnesses on any matter relevant to the issues even thought that matter was not covered in the direct examination; and

(d) to impeach any witness regardless of who first called such witness to testify and to rebut any evidence.

(v) Hearings need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions.

(vi) Any hearing may be recessed or adjourned from time to time at the discretion of the panel.

(9) Failure of Applicant to Petition the Board for Review or Request a Hearing Before the Board Within the Time Allowed by These Rules - If the applicant does not petition the board for review or request a hearing before the board regarding the specialty committee's recommendation of rejection of the application within the time allowed by these rules, the board shall act on the matter at its next board meeting.

(b) Failure of a Written Examination Prepared and Administered by a Certification Committee

(1) Review of Examination - Within 30 days of the mailing of the notice from the board's executive director that the applicant has failed the written examination, the applicant may review his or her examination at the office of the board at a time designated by the executive director. The applicant will be given the applicant's scores for each question on the examination. The applicant shall not remove the examination from the board's office.

(2) Petition for Grade Review - If, after reviewing the examination, the applicant feels an error or errors were made in the grading, the applicant may file with the executive director a petition for grade review. The petition must be filed within 45 days of the mailing of the notice of failure and should set out in detail the examination questions and answers which, in the opinion of the applicant, have been incorrectly graded. Supporting information may be filed to substantiate the applicant's claim.

(3) Review Procedure - The applicant's examination and petition shall be submitted to a panel consisting of a minimum of at least three members of the specialty committee (the review committee of the specialty committee). All information will be submitted in blind form, the staff being responsible for deleting any identifying information on the examination or the petition. The review committee of the specialty committee shall review the petition of the applicant and determine whether the grade of the examination should remain the same or be changed. The review committee shall make a written report to the board setting forth its recommendation relative to the grade on the applicant's examination and an explanation of its recommendation.

(4) Decision of the Board - The board shall consider the petition and the report and recommendation of the review committee and shall certify the applicant if it determines that the applicant has satisfied all of the standards for certification.

(c) Failure of a Written Examination Prepared and Administered by a Testing Organization on Behalf of the Board.

The applicant shall comply with the review and appeal procedures of any testing organization retained by the board to prepare and administer the certification examination.

History Note: Statutory Authority G.S. 84-23

Readopted Effective December 8, 1994

Amended June 1, 1995; November 16, 2006; February 5, 2009

.1802 Denial, Revocation, or Suspension of Continued Certification as a Specialist

(a) Denial of Continued Certification - The board, upon its initiative or upon recommendation of the appropriate specialty committee, may deny continued certification of a specialist, if the applicant does not meet the requirements as found in Rule .1721(a) of this subchapter.

(b) Revocation and Suspension of Certification as a Specialist. The board shall revoke the certification of a lawyer as provided in Rule .1723(a) of this

subchapter and may revoke or suspend the certification of a lawyer as provided in Rule .1723(b) of this subchapter.

(c) Notification of Board Action - The executive director shall notify the lawyer of the board's action to grant or deny continued certification as a specialist upon application for continued certification pursuant to Rule .1721(a) of this subchapter, or to revoke or suspend continued certification pursuant to Rule .1723(a) or (b) of this subchapter. The lawyer will also be notified of his or her right to a hearing if a hearing is allowed by these rules..

(d) Request for Hearing - Within 21 days of the mailing of notice from the executive director of the board that the lawyer has been denied continued certification pursuant to Rule .1721(a) or that certification has been revoked or suspended pursuant to Rule .1723(b), the lawyer must request a hearing before the board in writing. There is no right to a hearing upon automatic revocation pursuant to Rule .1723(a).

(e) Hearing Procedure - Except as set forth in Rule .1802(f) below, the rules set forth in Rule .180l(a)(8) of this subchapter shall be followed when a lawyer requests a hearing regarding the denial of continued certification pursuant to Rule .1721(a) or the revocation or suspension of certification under Rule .1723(b).

(f) Burden of Proof: Preponderance of the Evidence - A three-member panel of the board shall apply the preponderance of the evidence rule in determining whether the lawyer's certification should be continued, revoked or suspended. In cases of denial of an application for continued certification under Rule .1721(a), the burden of proof is upon the lawyer. In cases of revocation or suspension under Rule .1723(b), the burden of proof is upon the board.

(g) Notification of Board's Decision - After the hearing the board shall timely notify the lawyer of its decision regarding continued certification as a specialist.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994
Amended February 5, 2004

.1803 Reserved

.1804 Appeal to the Council

(a) Appealable Decisions - An appeal may be taken to the council from a decision of the board which denies an applicant certification (i.e., when an applicant's application has been rejected because it is incomplete and/or not in compliance with the standards for certification or when an applicant fails the written specialty examination), denies an applicant continued certification as a specialist, or suspends or revokes a specialist's certification. (Persons who appeal the board's decision are referred to herein as appellants.)

(b) Filing the Appeal - An appeal from a decision of the board as described in Rule .1804(a) above may be taken by filing with the executive director of the North Carolina State Bar (the State Bar) a written notice of appeal not later than 21 days after the mailing of the board's decision to the applicant who is denied certification or continued certification or to a lawyer whose certification is suspended or revoked.

(c) Time and Place of Hearing - The appeal will be scheduled for hearing at a time set by the council. The executive director of the State Bar shall notify the appellant and the board of the time and place of the hearing before the council.

(d) Record on Appeal to the Council

(1) The record on appeal to the council shall consist of all the evidence offered at the hearing before the board. The executive director of the board shall assemble the record and certify it to the executive director of the State Bar and notify the appellant of such action.

(2) The appellant shall make prompt arrangement with the court reporter to obtain and have filed with the executive director of the State Bar a complete transcript of the hearing. Failure of the appellant to make such arrangements and pay the costs shall be grounds for dismissal of the appeal.

(e) Parties Appearing Before the Council - The appellant may request to appear, with or without counsel, before the council and make oral argument. The board may appear on its own behalf or by counsel.

(f) Appeal Procedure - The council shall consider the appeal en banc. The council shall consider only the record on appeal, briefs, and oral arguments. The decision of the council shall be by a majority of those members voting. All council members present at the meeting may participate in the discussion and deliberation of the appeal. Members of the board who also serve on the council are recused from voting on the appeal.

(g) Notice of the Council's decision - The appellant shall receive written notice of the council's decision.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.1805 Judicial Review

(a) Appeals - The appellant or the board may appeal from an adverse ruling by the council.

(b) Wake County Superior Court - All appeals from the council shall lie to the Wake County Superior Court. (See N.C. *State Bar v. Du Mont*, 304 N.C. 627, 286 S.E.2d 89 (1982).)

(c) Judicial Review Procedures - Article 4 of G.S. l50-B shall be complied with by all parties relative to the procedures for judicial review of the council's decision.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.1806 Additional Rules Pertaining to Hearing and Appeals

(a) Notices - Every notice required by these rules shall be mailed to the applicant.

(b) Expenses Related to Hearings and Appeals - In its discretion, the board may direct that the necessary expenses incurred in any investigation, processing, and hearing of any matter to the board or appeal to the council be paid by the board or appeal to the council be paid by the board. However, all expenses related to travel to any hearing or appeal for the applicant, his or her attorney, and witnesses called by the applicant shall be home by the applicant and shall not be paid by the board.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

Section .2100 Certification Standards for the Real Property Law Specialty

.2101 Establishment of Specialty Field

The North Carolina State Bar Board of Legal Specialization (the board) hereby designates real property law, including the subspecialties of real property-residential transactions and real property-business, commercial, and industrial transactions, as a field of law for which certification of specialists under the North Carolina Plan of Legal Specialization (*see* Section .1700 of this subchapter) is permitted.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.2102 Definition of Specialty

The specialty of real property law is the practice of law dealing with real property transactions, including title examination, property transfers, financing, leases, and determination of property rights. Subspecialties in the field are identified and defined as follows:

(a) Real Property Law-Residential Transactions - The practice of law dealing with the acquisition, ownership, leasing, financing, use, transfer and disposition, of residential and real property by individuals;

(b) Real Property Law-Business, Commercial, and Industrial Transactions - The practice of law dealing with the acquisition, ownership, leasing, management, financing, development, use, transfer, and disposition of residential, business, commercial, and industrial real property.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.2103 Recognition as a Specialist in Real Property Law

A lawyer may qualify as a specialist by meeting the standards set for one or both of the subspecialties. If a lawyer qualifies as a specialist in real property law by meeting the standards set for the real property law-residential transactions subspecialty, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Real Property Law-Residential Transactions." If a lawyer

qualifies as a specialist in real property law by meeting the standards set for the real property law-business, commercial, and industrial transactions, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Real Property Law-Business, Commercial, and Industrial Transactions." If a lawyer qualifies as a specialist in real property law by meeting the standards set for both the real property law-residential transactions subspecialty and the real property law-business, commercial, and industrial transactions subspecialty, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Real Property Law-Residential, Business, Commercial, and Industrial Transactions."

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.2104 Applicability of Provisions of the North Carolina Plan of Legal Specialization

Certification and continued certification of specialists in real property law shall be governed by the provisions of the North Carolina Plan of Legal Specialization (*see* Section .1700 of this subchapter) as supplemented by these standards for certification.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.2105 Standards for Certification as a Specialist in Real Property Law

Each applicant for certification as a specialist in real property law shall meet the minimum standards set forth in Rule .1720 of this subchapter.

In addition, each applicant shall meet the following standards for certification in real property law:

(a) Licensure and Practice - An applicant shall be licensed and in good standing to practice law in North Carolina as of the date of application. An applicant shall continue to be licensed and in good standing to practice law in North Carolina during the period of certification.

(b) Substantial Involvement - An applicant shall affirm to the board that the applicant has experience through substantial involvement in the practice of real property law.

(1) Substantial involvement shall mean during the five years preceding the application, the applicant has devoted an average of at least 500 hours a year to the practice of real property law, but not less than 400 hours in any one year.

(2) Practice shall mean substantive legal work done primarily for the purpose of legal advice or representation, or a practice equivalent.

(3) Practice equivalent means service as a law professor concentrating in the teaching of real property law. Teaching may be substituted for one year of experience to meet the five-year requirement.

(c) Continuing Legal Education - An applicant must have earned no less than 36 hours of accredited continuing legal education (CLE) credits in real property law during the three years preceding application with not less than six credits in any one year. Of the 36 hours of CLE, at least 30 hours shall be in real property law and the balance may be in the related areas of environmental law, taxation, business organizations, estate planning and probate law, and elder law.

(d) Peer review - An applicant must make a satisfactory showing of qualification through peer review. An applicant must provide the names of ten lawyers or judges who are familiar with the competence and qualification of the applicant in the specialty field. Written peer reference forms will be sent by the board or the specialty committee to each of the references. Completed peer reference forms must be received from at least five of the references. All references must be licensed and in good standing to practice in North Carolina. An applicant consents to the confidential inquiry by the board or the specialty committee of the submitted references and other persons concerning the applicant's competence and qualification.

(1) A reference may not be related by blood or marriage to the applicant nor may the reference be a partner or associate of the applicant at the time of the application.

(2) The references shall be given on standardized forms provided by the board with the application for certification in the specialty field. These forms shall be returned directly to the specialty committee.

(e) Examinations - The applicant must pass a written examination designed to test the applicant's knowledge and ability in real property law.

(1) Terms - The examination(s) shall be in written form and shall be given annually. The examination(s) shall be administered and graded uniformly by the specialty committee.

(2) Subject Matter - The examination shall cover the applicant's knowledge in the following topics in real property law or in the subspecialty or subspecialties that the applicant has elected:

(A) title examinations, property transfers, financing, leases, and determination of property rights;

(B) the acquisition, ownership, leasing, financing, use, transfer, and disposition of residential real property by individuals;

(C) the acquisition, ownership, leasing, management, financing, development, use, transfer, and disposition of residential, business, commercial, and industrial real property.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994
Amended October 9, 2008

.2106 Standards for Continued Certification as a Specialist

The period of certification is five years. Prior to the expiration of the certification period, a certified specialist who desires continued certification must apply for continued certification within the time limit described in Rule .2106(d) below. No examination will be required for continued certification. However, each applicant for continued certification as a specialist shall comply with the specific requirements set forth below in addition to any general standards required by the board of all applicants for continued certification.

(a) Substantial Involvement - The specialist must demonstrate that, for each of the five years preceding application, he or she has had substantial involvement in the specialty as defined in Rule .2105(b) of this subchapter.

(b) Continuing Legal Education - The specialist must have earned no less than 60 hours of accredited continuing legal education credits in real property law as accredited by the board with not less than six credits earned in any one year. Of the 60 hours of CLE, at least 50 hours shall be in real property law and the balance may be in the related areas of environmental law, taxation, business organizations, estate planning and probate law,and elder law.

(c) Peer Review - The specialist must comply with the requirements of Rule .2105(d) of this subchapter.

(d) Time for Application - Application for continued certification shall be made not more than one hundred eighty (180) days nor less than ninety days prior to the expiration of the prior period of certification.

(e) Lapse of Certification - Failure of a specialist to apply for continued certification in a timely fashion will result in a lapse of certification. Following such lapse, recertification will require compliance with all requirements of Rule .2105 of this subchapter, including the examination.

(f) Suspension or Revocation of Certification - If an applicant's certification has been suspended or revoked during the period of certification, then the application shall be treated as if it were for initial certification under Rule .2105 of this subchapter.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994
Amended October 9, 2008

.2107 Applicability of Other Requirements

The specific standards set forth herein for certification of specialists in real property law are subject to any general requirement, standard, or procedure adopted by the board applicable to all applicants for certification or continued certification.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

Section .2200 Certification Standards for the Bankruptcy Law Specialty

.2201 Establishment of Specialty Field

The North Carolina State Bar Board of Legal Specialization (the board) hereby designates bankruptcy law, including the subspecialties of consumer bankruptcy law and business bankruptcy law, as a field of law for which certification

of specialists under the Plan of Legal Specialization (*see* Section .1700 of this subchapter) is permitted.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.2202 Definition of Specialty

The specialty of bankruptcy law is the practice of law dealing with all laws and procedures involving the rights, obligations, and remedies between debtors and creditors in potential or pending federal bankruptcy cases and state insolvency actions. Subspecialties in the field are identified and defined as follows:

(a) Consumer Bankruptcy Law - The practice of law dealing with consumer bankruptcy and the representation of interested parties in contested matters or adversary proceedings in individual filings of Chapter 7, Chapter 12, or Chapter 13;

(b) Business Bankruptcy Law - The practice of law dealing with business bankruptcy and the representation of interested parties in contested matters or adversary proceedings in bankruptcy cases filed on behalf of debtors who are or have been engaged in business prior to an entity filing Chapter 7, Chapter 9, Chapter 11, or Chapter 12.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.2203 Recognition as a Specialist in Bankruptcy Law

A lawyer may qualify as a specialist by meeting the standards set for one or both of the subspecialties. If a lawyer qualifies as a specialist in bankruptcy law by meeting the standards set for the consumer bankruptcy law subspecialty, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Consumer Bankruptcy Law." If a lawyer qualifies as a specialist in bankruptcy law by meeting the standards set for the business bankruptcy law subspecialty, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Business Bankruptcy Law." If a lawyer qualifies as a specialist in bankruptcy law by meeting the standards set for both the consumer bankruptcy law and the business bankruptcy law subspecialties, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Business and Consumer Bankruptcy Law."

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.2204 Applicability of Provisions of the North Carolina Plan of Legal Specialization

Certification and continued certification of specialists in bankruptcy law shall be governed by the provisions of the Plan of Legal Specialization (*see* Section .1700 of this subchapter) as supplemented by these standards for certification.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.2205 Standards for Certification as a Specialist in Bankruptcy Law

Each applicant for certification as a specialist in bankruptcy law shall meet the minimum standards set forth in Rule .1720 of this subchapter. In addition, each applicant shall meet the following standards for certification as a specialist in bankruptcy law:

(a) Licensure and Practice - An applicant shall be licensed and in good standing to practice law in North Carolina as of the date of application. An applicant shall continue to be licensed and in good standing to practice law in North Carolina during the period of certification.

(b) Substantial Involvement - An applicant shall affirm to the board that the applicant has experience through substantial involvement in the practice of bankruptcy law.

(1) Substantial involvement shall mean during the five years preceding the application, the applicant has devoted an average of at least 500 hours a year to the practice of bankruptcy law, but not less than 400 hours in any one year.

(2) Practice shall mean substantive legal work done primarily for the purpose of legal advice or representation, or a practice equivalent.

(3) Practice equivalent shall mean, after admission to the bar of any state, District of Columbia, or a U.S. territorial possession

(A) service as a judge of any bankruptcy court, service as a clerk of any bankruptcy court, or service as a standing trustee;

(B) corporate or government service, including military service, after admission to the bar of any state, the District of Columbia, or any U.S. territorial possession, but only if the bankruptcy work done was legal advice or representation of the corporation, governmental unit, or individuals connected therewith;

(C) service as a deputy or assistant clerk of any bankruptcy court, as a research assistant to a bankruptcy judge, or as a law professor teaching bankruptcy and/or debtor-creditor related courses may be substituted for one year of experience to meet the five-year requirement.

(c) Continuing Legal Education - An applicant must have earned no less than 36 hours of accredited continuing legal education (CLE) credits in bankruptcy law, during the three years preceding application with not less than 6 credits in any one year.

(d) Peer Review - An applicant must make a satisfactory showing of qualification through peer review. An applicant must provide the names of ten lawyers or judges who are familiar with the competence and qualification of the applicant in the specialty field. Written peer reference forms will be sent by the board or the specialty committee to each of the references. Completed peer reference forms must be received from at least five of the references. All references must be licensed and in good standing to practice in North Carolina. An applicant consents to the confidential inquiry by the board or the specialty committee of the submitted references and other persons concerning the applicant's competence and qualification.

(1) A reference may not be a judge of any bankruptcy court.

(2) A reference may not be related by blood or marriage to the applicant nor may the reference be a partner or associate of the applicant at the time of the application.

(3) The references shall be given on standardized forms provided by the board with the application for certification in the specialty field. These forms shall be returned directly to the specialty committee.

(e) Examination - The applicant must pass a written examination designed to test the applicant's knowledge and ability in bankruptcy law.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994
Amended November 16, 2006

.2206 Standards for Continued Certification as a Specialist

The period of certification is five years. Prior to the expiration of the certification period, a certified specialist who desires continued certification must apply for continued certification within the time limit described in Rule .2206(d) below. No examination will be required for continued certification. However, each applicant for continued certification as a specialist shall comply with the specific requirements set forth below in addition to any general standards required by the board of all applicants for continued certification.

(a) Substantial Involvement - The specialist must demonstrate that, for each of the five years preceding application, he or she has had substantial involvement in the specialty as defined in Rule .2205(b) of this subchapter.

(b) Continuing Legal Education - Since last certified, a specialist must have earned no less than 60 hours of accredited continued legal education credits in bankruptcy law with not less than 6 credits earned in any one year.

(c) Peer Review - The specialist must comply with the requirements of Rule .2205(d) of this subchapter.

(d) Application for continued certification shall be made not more than 180 days nor less than 90 days prior to the expiration of the prior period of certification.

(e) Lapse of Certification - Failure of a specialist to apply for continued certification in a timely fashion will result in a lapse of certification. Following such lapse, recertification will require compliance with all requirements of Rule .2205 of this subchapter, including the examination.

(f) Suspension or Revocation of Certification - If an applicant's certification has been suspended or revoked during the period of certification, then the application shall be treated as if it were for initial certification under Rule .2205 of this subchapter.

History Note: Statutory Authority G.S. 84-23

Readopted Effective December 8, 1994

.2207 Applicability of Other Requirements

The specific standards set forth herein for certification of specialists in bankruptcy law are subject to any general requirement, standard, or procedure adopted by the board applicable to all applicants for certification.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

Section .2300 Certification Standards for the Estate Planning and Probate Law Specialty

.2301 Establishment of Specialty Field

The North Carolina State Bar Board of Legal Specialization (the board) hereby designates estate planning and probate law as a field of law for which certification of specialists under the Plan of Legal Specialization (*see* Section .1700 of this subchapter) is permitted.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.2302 Definition of Specialty

The specialty of estate planning and probate law is the practice of law dealing with planning for conservation and disposition of estates, including consideration of federal and state tax consequences; preparation of legal instruments to effectuate estate plans; and probate of wills and administration of estates, including federal and state tax matters.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.2303 Recognition as a Specialist in Estate Planning and Probate Law

If a lawyer qualifies as a specialist in estate planning and probate law by meeting the standards set for the specialty, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Estate Planning and Probate Law."

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.2304 Applicability of Provisions of the North Carolina Plan of Legal Specialization

Certification and continued certification of specialists in estate planning and probate law shall be governed by the provisions of the Plan of Legal Specialization (*see* Section .1700 of this subchapter) as supplemented by these standards for certification.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.2305 Standards for Certification as a Specialist in Estate Planning and Probate Law

Each applicant for certification as a specialist in estate planning and probate law shall meet the minimum standards set forth in Rule .1720 of this subchapter. In addition, each applicant shall meet the following standards for certification as a specialist in estate planning and probate law:

(a) Licensure and Practice - An applicant shall be licensed and in good standing to practice law in North Carolina as of the date of application. An applicant shall continue to be licensed and in good standing to practice law in North Carolina during the period of certification.

(b) Substantial Involvement - The applicant shall affirm to the board that the applicant has experience through substantial involvement in the practice of estate planning and probate law.

(1) Substantial involvement shall be measured as follows:

(A) Time Spent - During the five years preceding the application, the applicant has devoted an average of at least 500 hours a year to the practice of estate planning and probate law, but not less than 400 hours in any one year;

(B) Experience Gained - During the five years immediately preceding application, the applicant shall have had continuing involvement in a substantial portion of the activities described in each of the following paragraphs:

(i) counseled persons in estate planning, including giving advice with respect to gifts, life insurance, wills, trusts, business arrangements and agreements, and other estate planning matters;

(ii) prepared or supervised the preparation of (1) estate planning instruments, such as simple and complex wills (including provisions for testamentary trusts, marital deductions and elections), revocable and irrevocable inter vivos trusts (including short-term and minor's trusts), business planning agreements (including buy-sell agreements and employment contracts), powers of attorney and other estate planning instruments; and (2) federal and state gift tax returns, including representation before the Internal Revenue Service and the North Carolina Department of Revenue in connection with gift tax returns;

(iii) handled or advised with respect to the probate of wills and the administration of decedents' estates, including representation of the personal representative before the clerk of superior court, guardianship, will contest, and declaratory judgment actions;

(iv) prepared, reviewed or supervised the preparation of federal estate tax returns, North Carolina inheritance tax returns, and federal and state fiduciary income tax returns, including representation before the Internal Revenue Service and the North Carolina Department of Revenue in connection with such tax returns and related controversies.

(2) Practice shall mean substantive legal work done primarily for the purpose of legal advice or representation, or a practice equivalent.

(3) Practice equivalent shall mean

(A) receipt of an LL.M. degree in taxation or estate planning and probate law (or such other related fields approved by the specialty committee and the board from an approved law school) may be substituted for one year of experience to meet the five-year requirement;

(B) service as a trust officer with a corporate fiduciary having duties primarily in the area of estate and trust administration, may be substituted for one year of experience to meet the five-year requirement;

(C) service as a law professor concentrating in the teaching of taxation or estate planning and probate law (or such other related fields approved by the specialty committee and the board). Such service may be substituted for one year of experience to meet the five-year requirement.

(c) Continuing Legal Education - An applicant must have earned no less than 72 hours of accredited continuing legal education (CLE) credits in estate planning and probate law during the three years preceding application. Of the 72 hours of CLE, at least 45 hours shall be in estate planning and probate law (provided, however, that eight of the 45 hours may be in the related areas of elder law, Medicaid planning, and guardianship), and the balance may be in the related areas of taxation, business organizations, real property, family law, elder law, Medicaid planning, and guardianship.

(d) Peer Review - An applicant must make a satisfactory showing of qualification through peer review. An applicant must provide the names of ten lawyers or judges, all of whom are familiar with the competence and qualification of the applicant in the specialty field. Written peer reference forms will be sent by the board or the specialty committee to each of the references. Completed peer reference forms must be received from at least five of the references. All references must be licensed and in good standing to practice in North Carolina. An applicant consents to the confidential inquiry by the board or the specialty committee of the submitted references and other persons concerning the applicant's competence and qualification.

(1) A reference may not be related by blood or marriage to the applicant nor may the reference be a partner or associate of the applicant at the time of the application.

(2) The references shall be given on standardized forms provided by the board with the application for certification in the specialty field. These forms shall be returned directly to the specialty committee.

(e) Examination - The applicant must pass a written examination designed to test the applicant's knowledge and ability in estate planning and probate law.

(1) Terms - The examination shall be in written form and shall be given annually. The examination shall be administered and graded uniformly by the specialty committee.

(2) Subject Matter - The examination shall cover the applicant's knowledge and application of the law in the following topics:

(A) federal and North Carolina gift taxes;
(B) federal estate tax;
(C) North Carolina inheritance tax;
(D) federal and North Carolina fiduciary income taxes;
(E) federal and North Carolina income taxes as they apply to the final returns of the decedent and his or her surviving spouse;
(F) North Carolina law of wills and trusts;
(G) North Carolina probate law, including fiduciary accounting;
(H) federal and North Carolina income and gift tax laws as they apply to revocable and irrevocable inter vivos trusts:
(I) North Carolina law of business organizations, family law, and property law as they may be applicable to estate planning transactions;
(J) federal and North Carolina tax law applicable to partnerships and corporations (including S corporations) which may be encountered in estate planning and administration.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994
Amended October 9, 2008

.2306 Standards for Continued Certification as a Specialist

The period of certification is five years. Prior to the expiration of the certification period, a certified specialist who desires continued certification must apply for continued certification within the time limit described in Rule .2306(d) below. No examination will be required for continued certification. However, each applicant for continued certification as a specialist shall comply with the specific requirements set forth below in addition to any general standards required by the board of all applicants for continued certification.

(a) Substantial Involvement - The specialist must demonstrate that, for each of the five years preceding application, he or she has had substantial involvement in the specialty as defined in Rule .2305(b) of this subchapter.

(b) Continuing Legal Education - Since last certified, a specialist must have earned no less than 120 hours of accredited continuing legal education credits in estate planning and probate law. Of the 120 hours of CLE at least 75 hours shall be in estate planning and probate law (provided, however, that 15 of the 75 hours may be in the related areas of elder law, Medicaid planning, and guardianship), and the balance may be in the related areas of taxation, business organizations, real property, family law, elder law, Medicaid planning, and guardianship.

(c) Peer Review - The specialist must comply with the requirements of Rule .2305(d) of this subchapter.

(d) Time for Application - Application for continued certification shall be made not more than 180 days nor less than 90 days prior to the expiration of the prior period of certification.

(e) Lapse of Certification - Failure of a specialist to apply for continued certification in a timely fashion will result in a lapse of certification. Following such lapse, recertification will require compliance with all requirements of Rule .2305 of this subchapter, including the examination.

(f) Suspension or Revocation of Certification - If an applicant's certification has been suspended or revoked during the period of certification, then the application shall be treated as if it were for initial certification under Rule .2305 of this subchapter.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994
Amended October 9, 2008

.2307 Applicability of Other Requirements

The specific standards set forth herein for certification of specialists in estate planning and probate law are subject to any general requirement, standard, or procedure adopted by the board applicable to all applicants for certification or continued certification.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

Section .2400 Certification Standards for the Family Law Specialty

.2401 Establishment of Specialty Field

The North Carolina State Bar Board of Legal Specialization (the board) hereby designates family law as a field of law for which certification of specialists under the North Carolina Plan of Legal Specialization (*see* Section .1700 of this subchapter) is permitted.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.2402 Definition of Specialty

The specialty of family law is the practice of law relating to marriage, divorce, alimony, child custody and support, equitable distribution, enforcement of support, domestic violence, bastardy, and adoption.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.2403 Recognition as a Specialist in Family Law

If a lawyer qualifies as a specialist in family law by meeting the standards set for the specialty, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Family Law."

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.2404 Applicability of Provisions of the North Carolina Plan of Legal Specialization

Certification and continued certification of specialists in family law shall be governed by the provisions of the North Carolina Plan of Legal Specialization (*see* Section .1700 of this subchapter) as supplemented by these standards for certification.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.2405 Standards for Certification as a Specialist in Family Law

Each applicant for certification as a specialist in family law shall meet the minimum standards set forth in Rule .1720 of this subchapter. In addition, each applicant shall meet the following standards for certification as a specialist in family law:

(a) Licensure and Practice - An applicant shall be licensed and in good standing to practice law in North Carolina as of the date of application. An applicant shall continue to be licensed and in good standing to practice law in North Carolina during the period of certification.

(b) Substantial Involvement - An applicant shall affirm to the board that the applicant has experience through substantial involvement in the practice of family law.

(1) Substantial involvement shall mean during the five years preceding the application, the applicant has devoted an average of at least 600 hours a year to the practice of family law, and not less than 400 hours during any one year.
(2) Practice shall mean substantive legal work done primarily for the purpose of legal advice or representation, or a practice equivalent.
(3) Practice equivalent shall mean
(A) service as a law professor concentrating in the teaching of family law. Such service may be substituted for one year of experience to meet the five-year requirement.
(B) service as a district court judge in North Carolina, hearing a substantial number of family law cases. Such service may be substituted for one year of experience to meet the five-year requirement.

(c) Continuing Legal Education - During the three calendar years prior to the year of application and the portion of the calendar year immediately prior to application, an applicant must have earned no less than 45 hours of accredited continuing legal education (CLE) credits in family law, nine of which may be in related fields. Related fields shall include taxation, trial advocacy, evidence, negotiation (including training in mediation, arbitration, and collaborative law), juvenile law, real property, estate planning and probate law, business organizations, employee benefits, bankruptcy, elder law, and immigration law. Only nine hours of CLE credit will be recognized for attendance at an extended negotiation or

mediation training course. Parenting coordinator training will not qualify for family law or related field hours. At least 9 hours of CLE in family law or related fields must be taken during each of the three calendar years preceding application.

(d) Peer Review - An applicant must make a satisfactory showing of qualification through peer review. An applicant must provide the names of ten lawyers or judges who are familiar with the competence and qualification of the applicant in the specialty field. Written peer reference forms will be sent by the board or the specialty committee to each of the references. Completed peer reference forms must be received from at least five of the references. All references must be licensed and in good standing to practice in North Carolina. An applicant consents to the confidential inquiry by the board or the specialty committee of the submitted references and other persons concerning the applicant's competence and qualification.

(1) A reference may not be related by blood or marriage to the applicant nor may the reference be a partner or associate of the applicant at the time of the application.

(2) The references shall be given on standardized forms provided by the board with the application for certification in the specialty field. These forms shall be returned directly to the specialty committee.

(e) Examination - The applicant must pass a written examination designed to test the applicant's knowledge and ability in family law.

(1) Terms - The examination shall be in written form and shall be given annually. The examination shall be administered and graded uniformly by the specialty committee.

(2) Subject Matter - The examination shall cover the applicant's knowledge and application of the law relating to marriage, divorce, alimony, child custody and support, equitable distribution, enforcement of support, domestic violence, bastardy, and adoption including, but not limited to, the following:

(A) contempt (Chapter 5A of the North Carolina General Statutes);

(B) adoptions (Chapter 48);

(C) bastardy (Chapter 49);

(D) divorce and alimony (Chapter 50);

(E) Uniform Child Custody Jurisdiction and Enforcement Act (Chapter 50A);

(F) domestic violence (Chapter 50B; Chapter 50C);

(G) marriage (Chapter 51);

(H) powers and liabilities of married persons (Chapter 52);

(I) Uniform Interstate Family Support Act (Chapter 52C);

(J) Uniform Premarital Agreement Act (Chapter 52B);

(K) termination of parental rights, as relating to adoption and termination for failure to provide support (Chapter 7B, Article 11);

(L) garnishment and enforcement of child support obligations (Chapter 110, Article 9);

(M) Parental Kidnapping Prevention Act (28 U.S.C.§1738A);

(N) Internal Revenue Code §§ 71 (Alimony), 215 (Alimony Deduction), 121 (Exclusion of Gain from the Sale of Principal Residence), 151 and 152 (Dependency Exemptions), 1041 (Transfer of Property Incidental to Divorce), 2043 and 2516 (Gift Tax Exception), 414(p) (Defining QDRO Requirements), 408 (d)(6) (IRA Transfer Requirements for Non-Taxable Event), and regulations interpretive of these Code sections; and

(O) Federal Wiretap Law.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994
Amended February 5, 2002; February 27, 2003; October 9, 2008

.2406 Standards for Continued Certification as a Specialist

The period of certification is five years. Prior to the expiration of the certification period, a certified specialist who desires continued certification must apply for continued certification within the time limit described in Rule .2406(d) below. No examination will be required for continued certification. However, each applicant for continued certification as a specialist shall comply with the specific requirements set forth below in addition to any general standards required by the board of all applicants for continued certification.

(a) Substantial Involvement - The specialist must demonstrate that, for each of the five years preceding application, he or she has had substantial involvement in the specialty as defined in Rule .2405(b) of this subchapter.

(b) Continuing Legal Education - Since last certified, a specialist must have earned no less than 60 hours of accredited continuing legal education credits in family law or related fields. Not less than nine credits may be earned in any one year, and no more than twelve credits may be in related fields. Related fields shall include taxation, trial advocacy, evidence, negotiations (including training in mediation, arbitration, and collaborative law), juvenile law, real property, estate planning and probate law, business organizations, employee benefits, bankruptcy, elder law, and immigration law. Only nine hours of CLE credit will be recognized for attendance at an extended negotiation or mediation training course. Parenting coordinator training will not qualify for family law or related field hours.

(c) Peer Review - The specialist must comply with the requirements of Rule .2405(d) of this subchapter.

(d) Time for Application - Application for continued certification shall be made not more than 180 days nor less than 90 days prior to the expiration of the prior period of certification.

(e) Lapse of Certification - Failure of a specialist to apply for continued certification in a timely fashion will result in a lapse of certification. Following such lapse, recertification will require compliance with all requirements of Rule .2405 of this subchapter, including the examination.

(f) Suspension or Revocation of Certification - If an applicant's certification has been suspended or revoked during the period of certification, then the application shall be treated as if it were for initial certification under Rule .2405 of this subchapter.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994
Amended February 27, 2003; October 9, 2008

.2407 Applicability of Other Requirements

The specific standards set forth herein for certification of specialists in family law are subject to any general requirement, standards, or procedure adopted by the board applicable to all applicants for certification or continued certification.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

Section .2500 Certification Standards for the Criminal Law Specialty

.2501 Establishment of Specialty Field

The North Carolina State Bar Board of Legal Specialization (the board) hereby designates criminal law, including the subspecialties of criminal appellate practice and state criminal law, as a field of law for which certification of specialists under the North Carolina Plan of Legal Specialization (*see* Section .1700 of this subchapter) is permitted.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.2502 Definition of Specialty

The specialty of criminal law is the practice of law dealing with the defense or prosecution of those charged with misdemeanor and felony crimes in state and federal trial and appellate courts. Subspecialties in the field are identified and defined as follows:

(a) Criminal Appellate Practice - The practice of criminal law at the appellate court level;

(b) State Criminal Law - The practice of criminal law in state trial and appellate courts.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.2503 Recognition as a Specialist in Criminal Law

A lawyer may qualify as a specialist by meeting the standards set for criminal law or the subspecialties of criminal appellate practice or state criminal law. If a lawyer qualifies as a specialist by meeting the standards set for the criminal law specialty, the lawyer shall be entitled to represent that he or she is a "Board

Certified Specialist in Criminal Law." If a lawyer qualifies as a specialist by meeting the standards set for the subspecialty of criminal appellate practice, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Criminal Appellate Practice." If a lawyer qualifies as a specialist by meeting the standards set for the subspecialty of state criminal law, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in State Criminal Law." If a lawyer qualifies as a specialist by meeting the standards set for both criminal law and the subspecialty of criminal appellate practice, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Criminal Law and Criminal Appellate Practice."

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.2504 Applicability of Provisions of the North Carolina Plan of Legal Specialization

Certification and continued certification of specialists in criminal law shall be governed by the provisions of the North Carolina Plan of Legal Specialization (*see* Section .1700 of this subchapter) as supplemented by these standards for certification.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

.2505 Standards for Certification as a Specialist

Each applicant for certification as a specialist in criminal law, the subspecialty of state criminal law, or the subspecialty of criminal appellate practice shall meet the minimum standards set forth in Rule .1720 of this subchapter. In addition, each applicant shall meet the following standards for certification:

(a) Licensure and Practice - An applicant shall be licensed and in good standing to practice law in North Carolina as of the date of the application. During the period of certification an applicant shall continue to be licensed and in good standing to practice law in North Carolina.

(b) Substantial Involvement - An applicant shall affirm to the board that the applicant has experience through substantial involvement in the practice of criminal law.

(1) Substantial involvement shall mean during the five years immediately preceding the application, the applicant devoted an average of at least 500 hours a year to the practice of criminal law, but not less than 400 hours in any one year. "Practice" shall mean substantive legal work, specifically including representation in criminal trials, done primarily for the purpose of providing legal advice or representation, or a practice equivalent.

(2) "Practice equivalent" shall mean:

(A) Service as a law professor concentrating in the teaching of criminal law for one year or more, which may be substituted for one year of experience to meet the five-year requirement set forth in Rule .2505(b)(1) above;

(B) Service as a federal, state or tribal court judge for one year or more, which may be substituted for one year of experience to meet the five-year requirement set forth in Rule .2505(b)(1) above;

(3) For the specialty of criminal law and the subspecialty of state criminal law, the board shall require an applicant to show substantial involvement by providing information that demonstrates the applicant's significant criminal trial experience such as:

(A) representation during the applicant's entire legal career in criminal trials concluded by verdict;

(B) representation as principal counsel of record in federal felony cases or state felony cases (Class G or higher) ;

(C) court appearances in other substantive criminal proceedings in criminal courts of any jurisdiction; and

(D) representation in appeals of decisions to the North Carolina Court of Appeals, the North Carolina Supreme Court, or any federal appellate court.

(4) For the subspecialty of criminal appellate practice, the applicant must have been engaged in the active practice of criminal appellate law for at least five years prior to certification during which the applicant devoted an average of at least 500 hours a year to the practice of criminal law (in both trial and appellate courts), but not less than 400 hours in any one year. The board may require an applicant to show substantial involvement in criminal appellate law by providing information regarding the applicant's participation, during the five years prior to application, in activities such as brief writing, motion practice, oral arguments, and the preparation and argument of extraordinary writs.

(c) Continuing Legal Education

(1) In the specialty of criminal law, the state criminal law subspecialty, and the criminal appellate practice subspecialty, an applicant must have earned no less than 40 hours of accredited continuing legal education credits in criminal law during the three years preceding the application, which 40 hours must include the following:

(A) at least 34 hours in skills pertaining to criminal law, such as evidence, substantive criminal law, criminal procedure, criminal trial advocacy, criminal trial tactics, and appellate advocacy;

(B) at least 6 hours in the area of ethics and criminal law.

(2) In order to be certified as a specialist in both criminal law and the subspecialty of criminal appellate law, an applicant must have earned no less than 46 hours of accredited continuing legal education credits in criminal law during the three years preceding application, which 46 hours must include the following:

(A) at least 40 hours in skills pertaining to criminal law, such as evidence, substantive criminal law, criminal procedure, criminal trial advocacy, criminal trial tactics, and appellate advocacy;

(B) at least 6 hours in the area of ethics and criminal law.

(d) Peer Review

(1) Each applicant for certification as a specialist in criminal law, the subspecialty of state criminal law, and the subspecialty of criminal appellate practice, must make a satisfactory showing of qualification through peer review.

(2) All references must be licensed and in good standing to practice in North Carolina and must be familiar with the competence and qualifications of the applicant in the specialty field. The applicant consents to the confidential inquiry by the board or the specialty committee of the submitted references and other persons concerning the applicant's competence and qualifications.

(3) Written peer reference forms will be sent by the board or the specialty committee to the references. Completed peer reference forms must be received from at least five of the references. The board or the specialty committee may contact in person or by telephone any reference listed by an applicant.

(4) Each applicant must provide for reference and independent inquiry the names and addresses of the following: (i) ten lawyers and judges who practice in the field of criminal law and who are familiar with the applicant's practice, and (ii) opposing counsel and the judge in last ten serious (Class G or higher) felony cases tried by the applicant.

(5) A reference may not be related by blood or marriage to the applicant nor may the reference be a partner or associate of the applicant at the time of the application.

(e) Examination - The applicant must pass a written examination designed to test the applicant's knowledge and ability.

(1) Terms - The examination(s) shall be in written form and shall be given at such times as the board deems appropriate. The examination(s) shall be administered and graded uniformly by the specialty committee.

(2) Subject Matter

The examination shall cover the applicant's knowledge in the following topics in criminal law, in the subspecialty of state criminal law, and/or in the subspecialty of criminal appellate practice, as the applicant has elected:

(A) the North Carolina and Federal Rules of Evidence;

(B) state and federal criminal procedure and state and federal laws affecting criminal procedure;

(C) constitutional law;

(D) appellate procedure and tactics;

(E) trial procedure and trial tactics;

(F) criminal substantive law;

(G) the North Carolina Rules of Appellate Procedure.

(3) Required Examination Components.

(A) Criminal Law Specialty.

An applicant for certification in the specialty of criminal law must pass part I of the examination on general topics in criminal law and part II of the examination (federal and state criminal law).

(B) State Criminal Law Subspecialty.

An applicant for certification in the subspecialty of state criminal law must pass part I of the examination on general topics in criminal law and part III of the examination on state criminal law.

(C) Criminal Appellate Practice Subspecialty

An applicant for certification in the subspecialty of criminal appellate practice must pass the criminal appellate practice examination in addition to passing part I of the criminal law examination (on general topics in criminal law) and passing part II (on federal and state criminal law) or part III (on state criminal law) of the examination. If an applicant for certification in criminal appellate practice is already certified as a specialist in the specialty of criminal law or the subspecialty of state criminal law, the applicant is only required to take and pass the criminal appellate practice examination.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994
Amended February 5, 2004; October 6, 2004; August 23, 2007

.2506 Standards for Continued Certification as a Specialist

The period of certification is five years. A certified specialist who desires continued certification must apply for continued certification within the time limit described in Rule .2506(d) below. No examination will be required for continued certification. However, each applicant for continued certification as a specialist shall comply with the specific requirements set forth below in addition to any general standards required by the board of all applicants for continued certification.

(a) Substantial Involvement - The specialist must demonstrate that for the five years preceding reapplication he or she has had substantial involvement in the specialty or subspecialty as defined in Rule .2505(b).

(b) Continuing Legal Education - The specialist must have earned no less than 65 hours of accredited continuing legal education credits in criminal law with not less than 6 credits earned in any one year.

(c) Peer Review - The specialist must comply with the requirements of Rule .2505(d) of this subchapter.

(d) Time for Application - Application for continuing certification shall be made not more than 180 days nor less than 90 days prior to the expiration of the prior period of certification.

(e) Lapse of Certification - Failure of a specialist to apply for continued certification in a timely fashion will result in a lapse of certification. Following such lapse, recertification will require compliance with all requirements of Rule .2505 of this subchapter, including the examination.

(f) Suspension or Revocation of Certification - If an applicant's certification has been suspended or revoked during the period of certification, then the application shall be treated as if it were for initial certification under Rule .2505 of this subchapter.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994
Amended February 5, 2004; October 6, 2004

.2507 Applicability of Other Requirements

The specific standards set forth herein for certification of specialists in criminal law, the subspecialty of state criminal law and the subspecialty of criminal appellate practice are subject to any general requirement, standard, or procedure adopted by the board applicable to all applicants for certification or continued certification.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994

Section .2600 Certification Standards for the Immigration Law Specialty

.2601 Establishment of Specialty Field

The North Carolina State Bar Board of Legal Specialization (the board) hereby designates immigration law as a field of law for which certification of specialists under the North Carolina Plan of Legal Specialization (*see* Section .1700 of this subchapter) is permitted.

History Note: Statutory Authority G.S. 84-23
Adopted March 6, 1997

.2602 Definition of Specialty

The specialty of immigration law is the practice of law dealing with obtaining and retaining permission to enter and remain in the United States including, but not limited to, such matters as visas, changes of status, deportation and exclusion, naturalization, appearances before courts and governmental agencies, and protection of constitutional rights.

History Note: Statutory Authority G.S. 84-23
Adopted March 6, 1997

.2603 Recognition as a Specialist in Immigration Law

If a lawyer qualifies as a specialist in immigration law by meeting the standards set for the specialty, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Immigration Law."

History Note: Statutory Authority G.S. 84-23
Adopted March 6, 1997

.2604 Applicability of Provisions of the North Carolina Plan of Legal Specialization

Certification and continued certification of specialists in immigration law shall be governed by the provisions of the North Carolina Plan of Legal Specialization (*see* Section .1700 of this subchapter) as supplemented by these standards for certification.

History Note: Statutory Authority G.S. 84-23
Adopted March 6, 1997

.2605 Standards for Certification as a Specialist in Immigration Law

Each applicant for certification as a specialist in immigration law shall meet the minimum standards set forth in Rule .1720 of this subchapter. In addition, each applicant shall meet the following standards for certification in immigration law:

(a) Licensure and Practice - An applicant shall be licensed and in good standing to practice law in North Carolina as of the date of application. An applicant shall continue to be licensed and in good standing to practice law in North Carolina during the period of certification.

(b) Substantial Involvement - An applicant shall affirm to the board that the applicant has experience through substantial involvement in the practice of immigration law.

(1) An applicant shall affirm that during the five years immediately preceding the application, the applicant devoted an average of at least 700 hours a year to the practice of immigration law, but not less than 400 hours in any one year. Service as a law professor concentrating in the teaching of immigration law may be substituted for one year of experience to meet the five-year requirement.

(2) An applicant shall show substantial involvement in immigration law for the required period by providing such information as may be required by the board regarding the applicant's participation in at least five of the seven categories of activities listed below during the five years immediately preceding the date of application:

(A) Family Immigration.

Representation of clients before the U.S. Immigration and Naturalization Service and the State Department in the filing of petitions and applications.

(B) Employment Related Immigration.

Representation of employers and/or aliens before at least one of the following: the N.C. Employment Security Commission, U.S. Department of Labor, U.S. Immigration and Naturalization Service, U.S. Department of State or U.S. Information Agency.

(C) Naturalization.

Representation of clients before the U.S. Immigration and Naturalization Service and judicial courts in naturalization matters.

(D) Administrative Hearings and Appeals.

Representation of clients before immigration judges in deportation, exclusion, bond redetermination, and other administrative matters; and the representation of clients in appeals taken before the Board of Immigration Appeals, Administrative Appeals Unit, Board of Alien Labor Certification Appeals, Regional Commissioners, Commissioner, Attorney General, Department of State Board of Appellate Review, and Office of Special Counsel for

Immigration Related Unfair Employment Practices (OCAHO).

(E) Administrative Proceedings and Review in Judicial Courts.

Representation of clients in judicial matters such as applications for habeas corpus, mandamus and declaratory judgments; criminal matters involving immigration law; petitions for review in judicial courts; and ancillary proceedings in judicial courts.

(F) Asylum and Refugee Status.

Representation of clients in these matters.

(G) Employer Verification, Sanctions, Document Fraud, Bond and Custody, Rescission, Registry, and Fine Proceedings.

Representation of clients in these matters.

(c) Continuing Legal Education - An applicant must earn no less than 48 hours of accredited continuing legal education (CLE) credits in immigration law during the four years preceding application. At least 20 of the 48 CLE credit hours must be earned during the first and second year preceding application and at least 20 of the CLE hours must be earned during the third and fourth years preceding application. Of the 48 hours, at least 42 must be in immigration law; the balance may be in the related areas of federal administrative procedure, trial advocacy, evidence, taxation, family law, employment law, and criminal law and procedure.

(d) Peer Review - An applicant must make a satisfactory showing of qualification through peer review. An applicant must provide the names of ten lawyers or judges who are familiar with the competence and qualification of the applicant in the specialty field. Written peer reference forms will be sent by the board or the specialty committee to each of the references. Completed peer reference forms must be received from at least five of the references. All references must be licensed and in good standing to practice in North Carolina. At least two of the completed peer reference forms received by the board must be from lawyers or judges who have substantial practice or judicial experience in immigration law. An applicant consents to the confidential inquiry by the board or the specialty committee of the submitted references and other persons concerning the applicant's competence and qualification.

(1) A reference may not be related by blood or marriage to the applicant nor may the reference be a partner or associate of the applicant at the time of the application.

(2) The references shall be given on standardized forms provided by the board with the application for certification in the specialty field. These forms shall be returned directly to the specialty committee.

(e) Examination - The applicant must pass a written examination designed to test the applicant's knowledge, skills, and proficiency in immigration law. The examination shall be in written form and shall be given annually. The examination shall be administered and graded uniformly by the specialty committee.

History Note: Statutory Authority G.S. 84-23

Adopted March 6, 1997

.2606 Standards for Continued Certification as a Specialist

The period of certification is five years. Prior to the expiration of the certification period, a certified specialist who desires continued certification must apply for continued certification within the time limit described in Rule .2606(d) below. No examination will be required for continued certification. However, each applicant for continued certification as a specialist shall comply with the specific requirements set forth below in addition to any general standards required by the board of all applicants for continued certification.

(a) Substantial Involvement - The specialist must demonstrate that, for each of the five years preceding application, he or she has had substantial involvement in the specialty as defined in Rule .2605(b) of this subchapter.

(b) Continuing Legal Education - The specialist must have earned no less than 60 hours of accredited continuing legal education credits in immigration law as accredited by the board. At least 30 of the 60 CLE credit hours must be earned during the first three years after certification or recertification, as applicable. Of the 60 hours, at least 52 must be in immigration law; the balance may be in the related areas of federal administrative procedure, trial advocacy, evidence, taxation, family law, employment law, and criminal law and procedure.

(c) Peer Review - The specialist must comply with the requirements of Rule .2605(d) of this subchapter.

(d) Time for Application - Application for continued certification shall be made not more than one hundred eighty (l80) days nor less than ninety days prior to the expiration of the prior period of certification.

(e) Lapse of Certification - Failure of a specialist to apply for continued certification in a timely fashion will result in a lapse of certification. Following such lapse, recertification will require compliance with all requirements of Rule .2605 of this subchapter, including the examination.

(f) Suspension or Revocation of Certification - If an applicant's certification has been suspended or revoked during the period of certification, then the application shall be treated as if it were for initial certification under Rule .2605 of this subchapter.

History Note: Statutory Authority G.S. 84-23

Adopted March 6, 1997

.2607 Applicability of Other Requirements

The specific standards set forth herein for certification of specialists in immigration law are subject to any general requirement, standard, or procedure adopted by the board applicable to all applicants for certification or continued certification.

History Note: Statutory Authority G.S. 84-23

Adopted March 6, 1997

Section .2700 Certification Standards for the Workers' Compensation Law Specialty

.2701 Establishment of Specialty Field

The North Carolina State Bar Board of Legal Specialization (the board) hereby designates workers' compensation as a field of law for which certification of specialists under the North Carolina Plan of Legal Specialization (see Section .1700 of this subchapter) is permitted.

History Note: Statutory Authority G.S. 84-23

Adopted May 4, 2000

.2702 Definition of Specialty

The specialty of workers' compensation is the practice of law involving the analysis of problems or controversies arising under the North Carolina Workers' Compensation Act (Chapter 97, North Carolina General Statutes) and the litigation of those matters before the North Carolina Industrial Commission.

History Note: Statutory Authority G.S. 84-23

Adopted May 4, 2000

.2703 Recognition as a Specialist in Workers' Compensation Law

If a lawyer qualifies as a specialist in workers' compensation law by meeting the standards set for the specialty, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Workers' Compensation Law."

History Note: Statutory Authority G.S. 84-23

Adopted May 4, 2000

.2704 Applicability of Provisions of the North Carolina Plan of Legal Specialization

Certification and continued certification of specialists in workers' compensation law shall be governed by the provisions of the North Carolina Plan of Legal Specialization (see Section .1700 of this subchapter) as supplemented by these standards for certification.

History Note: Statutory Authority G.S. 84-23

Adopted May 4, 2000

.2705 Standards for Certification as a Specialist in Workers' Compensation Law

Each applicant for certification as a specialist in workers' compensation law shall meet the minimum standards set forth in Rule .1720 of this subchapter. In addition, each applicant shall meet the following standards for certification in workers' compensation law:

(a) Licensure and Practice - An applicant shall be licensed and in good standing to practice law in North Carolina as of the date of application. An applicant shall continue to be licensed and in good standing to practice law in North Carolina during the period of certification.

(b) Substantial Involvement - An applicant shall affirm to the board that the applicant has experience through substantial involvement in the practice of workers' compensation law.

(1) Substantial involvement shall mean during the five years immediately preceding the application, the applicant devoted an average of at least 500 hours a year to the practice of workers' compensation law, but not less than 400 hours in any one year. "Practice" shall mean substantive legal work done primarily for the purpose of providing legal advice or representation, or a practice equivalent.

(2) "Practice equivalent" shall mean:

(A) Service as a law professor concentrating in the teaching of workers' compensation law for one year or more may be substituted for one year of experience to meet the five-year requirement set forth in Rule .2705(b)(1) above;

(B) Service as a mediator of workers' compensation cases may be included in the hours necessary to satisfy the requirement set forth in Rule .2705(b)(1) above;

(C) Service as a deputy commissioner or commissioner of the North Carolina Industrial Commission may be substituted for the substantial involvement requirements in Rule .2705(b)(1) above provided

(i) the applicant was a full time deputy commissioner or commissioner throughout the five years prior to application, or

(ii) the applicant was engaged in the private representation of clients for at least one year during the five years immediately preceding the application; and, during this year, the applicant devoted not less than 400 hours to the practice of workers' compensation law. During the remaining four years, the applicant was either engaged in the private representation of clients and devoted an average of at least 500 hours a year to the practice of workers' compensation law, but not less than 400 hours in any one year, or served as a full time deputy commissioner or commissioner of the North Carolina Industrial Commission.

(3) The board may require an applicant to show substantial involvement in workers' compensation law by providing information regarding the applicant's participation, during the five years immediately preceding the date of the application, in activities such as those listed below:

(A) representation as principal counsel of record in complex cases tried to an opinion and award of the North Carolina Industrial Commission;

(B) representation in occupational disease cases tried to an opinion and award of the North Carolina Industrial Commission; and

(C) representation in appeals of decisions to the North Carolina Court of Appeals or the North Carolina Supreme Court.

(c) Continuing Legal Education - An applicant must earn no less than thirty-six hours of accredited continuing legal education (CLE) credits in workers' compensation law during the three years preceding application, with not less than six credits earned in any one year. Of the thirty-six hours of CLE, at least eighteen hours shall be in workers' compensation law, and the balance may be in the following related fields: civil trial practice and procedure; evidence; mediation; medical injuries, medicine or anatomy; labor and employment law; and Social Security disability law.

(d) Peer Review - An applicant must make a satisfactory showing of qualification through peer review. An applicant must provide the names of ten lawyers, commissioners or deputy commissioners of the North Carolina Industrial Commission, or judges who are familiar with the competence and qualification of the applicant in the specialty field. Written peer reference forms will be sent by the board or the specialty committee to each of the references. Completed peer reference forms must be received from at least five of the references. All references must be licensed and in good standing to practice in North Carolina and have substantial practice or judicial experience in workers' compensation law. An applicant consents to the confidential inquiry by the board or the specialty committee of the submitted references and other persons concerning the applicant's competence and qualification.

(1) A reference may not be related by blood or marriage to the applicant nor may the reference be a partner or associate of the applicant at the time of the application.

(2) The references shall be given on standardized forms mailed by the board to each reference. These forms shall be returned directly to the specialty committee.

(e) Examination - An applicant must pass a written examination designed to demonstrate sufficient knowledge, skills, and proficiency in the field of workers' compensation law to justify the representation of special competence to the legal profession and the public. The examination shall be given annually in written form and shall be administered and graded uniformly by the specialty committee.

History Note: Statutory Authority G.S. 84-23
Adopted May 4, 2000

.2706 Standards for Continued Certification as a Specialist

The period of certification is five years. Prior to the expiration of the certification period, a certified specialist who desires continued certification must apply for continued certification within the time limit described in Rule .2706(d) below. No examination will be required for continued certification. However, each applicant for continued certification as a specialist shall comply with the specific requirements set forth below in addition to any general standards required by the board of all applicants for continued certification.

(a) Substantial Involvement - The specialist must demonstrate that, for each of the five years preceding application, he or she has had substantial involvement in the specialty as defined in Rule .2705(b) of this subchapter, provided, however, that a specialist who served on the Industrial Commission as a full time commissioner or deputy commissioner during the five years preceding application may substitute each year of service on the Industrial Commission for one year of practice.

(b) Continuing Legal Education - The specialist must earn no less than sixty hours of accredited continuing legal education credits in workers' compensation law during the five years preceding application. Not less than six credits may be earned in any one year. Of the sixty hours of CLE, at least thirty hours shall be in workers' compensation law, and the balance may be in the following related fields: civil trial practice and procedure; evidence; mediation; medical injuries, medicine or anatomy; labor and employment law; and Social Security disability law.

(c) Peer Review - The specialist must comply with the requirements of Rule .2705(d) of this subchapter.

(d) Time for Application - Application for continued certification shall be made not more than 180 days nor less than ninety days prior to the expiration of the prior period of certification.

(e) Lapse of Certification - Failure of a specialist to apply for continued certification in a timely fashion will result in a lapse of certification. Following such lapse, recertification will require compliance with all requirements of Rule .2705 of this subchapter, including the examination.

(f) Suspension or Revocation of Certification - If an applicant's certification has been suspended or revoked during the period of certification, then the application shall be treated as if it were for initial certification under Rule .2705 of this subchapter.

History Note: Statutory Authority G.S. 84-23
Adopted May 4, 2000

.2707 Applicability of Other Requirements

The specific standards set forth herein for certification of specialists in workers' compensation law are subject to any general requirement, standard, or procedure adopted by the board applicable to all applicants for certification or continued certification.

History Note: Statutory Authority G.S. 84-23
Adopted May 4, 2000

Section .2800, Certification Standards for the Social Security Disability Law Specialty

.2801 Establishment of Specialty Field

The North Carolina State Bar Board of Legal Specialization (the board) hereby designates Social Security disability law as a field of law for which certification of specialists under the North Carolina Plan of Legal Specialization (see Section .1700 of this subchapter) is permitted.

History Note: Statutory Authority G.S. 84-23
Adopted March 2, 2006

.2802 Definition of Specialty

The specialty of Social Security disability law is the practice of law relating to the analysis of claims and controversies arising under Title II and Title XVI of the Social Security Act and the representation of claimants in those matters before the Social Security Administration and/or the federal courts.

History Note: Statutory Authority G.S. 84-23
Adopted March 2, 2006

.2803 Recognition as a Specialist in Social Security Disability Law

If a lawyer qualifies as a specialist in Social Security disability law by meeting the standards set for the specialty, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Social Security Disability Law."

History Note: Statutory Authority G.S. 84-23
Adopted March 2, 2006

.2804 Applicability of Provisions of the North Carolina Plan of Legal Specialization

Certification and continued certification of specialists in Social Security disability law shall be governed by the provisions of the North Carolina Plan of Legal Specialization (see Section .1700 of this subchapter) as supplemented by these standards for certification.

History Note: Statutory Authority G.S. 84-23
Adopted March 2, 2006

.2805 Standards for Certification as a Specialist in Social Security Disability Law

Each applicant for certification as a specialist in Social Security disability law shall meet the minimum standards set forth in Rule .1720 of this subchapter. In addition, each applicant shall meet the following standards for certification in Social Security disability law:

(a) Licensure and Practice - An applicant shall be licensed and in good standing to practice law in North Carolina as of the date of application. An applicant shall continue to be licensed and in good standing to practice law in North Carolina during the period of certification.

(b) Substantial Involvement - An applicant shall affirm to the board that the applicant has experience through substantial involvement in the practice of Social Security disability law.

(1) "Substantial involvement" shall mean during the five years immediately preceding the application, the applicant devoted an average of at least 600 hours a year to the practice of Social Security disability law, but not less than 500 hours in any one year. "Practice" shall mean substantive legal work done primarily for the purpose of providing legal advice or representation, or a practice equivalent.

(2) "Practice equivalent" shall mean:

(A) Service as a law professor concentrating in the teaching of Social Security disability law for one year or more may be substituted for one year of experience to meet the five-year requirement set forth in Rule .2805(b)(1) above;

(B) Service as a Social Security administrative law judge, Social Security staff lawyer, or assistant United States attorney involved in cases arising under Title II and Title XVI may be substituted for three of the five years necessary to satisfy the requirement set forth in Rule .2805(b)(1) above;

(3) The board may require an applicant to show substantial involvement in Social Security disability law by providing information regarding the applicant's participation, during his or her legal career, as primary counsel of record in the following:

(A) Proceedings before an administrative law judge;

(B) Cases appealed to the appeals council of the Social Security Administration; and

(C) Cases appealed to federal district court.

(c) Continuing Legal Education - An applicant must earn no less than 36 hours of accredited continuing legal education (CLE) credits in Social Security disability law and related fields during the three years preceding application, with not less than six credits earned in any one year. Of the 36 hours of CLE, at least 18 hours shall be in Social Security disability law, and the balance may be in the following related fields: trial skills and advocacy; practice management; medical injuries, medicine, or anatomy; ERISA; labor and employment law; elder law; workers' compensation law; and the law relating to long term disability or Medicaid/Medicare claims.

(d) Peer Review - An applicant must make a satisfactory showing of qualification through peer review. An applicant must provide the names of ten lawyers or judges who are familiar with the competence and qualification of the applicant in the specialty field. Written peer reference forms will be sent by the board or the specialty committee to each of the references. Completed peer reference forms must be received from at least five of the references. All references must be licensed and in good standing to practice law in a jurisdiction in the United States and have substantial practice or judicial experience in Social Security disability law. An applicant consents to the confidential inquiry by the board or the specialty committee of the submitted references and other persons concerning the applicant's competence and qualification.

(1) A reference may not be related by blood or marriage to the applicant nor may the reference be a partner or associate of the applicant at the time of the application.

(2) The references shall be given on standardized forms mailed by the board to each reference. These forms shall be returned directly to the specialty committee.

(e) Examination - An applicant must pass a written examination designed to demonstrate sufficient knowledge, skills, and proficiency in the field of Social Security disability law to justify the representation of special competence to the legal profession and the public. The examination shall be given annually in written form and shall be administered and graded uniformly by the specialty committee.

(1) Subject Matter - The examination shall cover the applicant's knowledge and application of the law relating to the following:

(A) Title II and Title XVI of the Social Security Act;

(B) Federal practice and procedure in Social Security disability cases;

(C) Medical proof of disability;

(D) Vocational aspects of disability;

(E) Workers' compensation offset;

(F) Eligibility for Medicare and Medicaid;

(G) Eligibility for Social Security retirement and survivors benefits;

(H) Interaction of Social Security benefits with employee benefits (e.g., long term disability and back pay);

(I) Equal Access to Justice Act; and

(J) Fee collection and other ethical issues in Social Security practice.

History Note: Statutory Authority G.S. 84-23
Adopted March 2, 2006

.2806 Standards for Continued Certification as a Specialist

The period of certification is five years. Prior to the expiration of the certification period, a certified specialist who desires continued certification must apply for continued certification within the time limit described in Rule .2806(d) below. No examination will be required for continued certification. However, each applicant for continued certification as a specialist shall comply with the specific requirements set forth below in addition to any general standards required by the board of all applicants for continued certification.

(a) Substantial Involvement. The specialist must demonstrate that, for each of the five years preceding application, he or she has had substantial involvement in the specialty as defined in Rule .2805(b) of this subchapter.

(b) Continuing Legal Education. The specialist must earn no less than 60 hours of accredited continuing legal education credits in Social Security disability law and related fields during the five years preceding application. Not less than six of the credits may be earned in any one-year. Of the 60 hours of CLE, at least 20 hours shall be in Social Security disability law, and the balance may be in the following related fields: trial skills and advocacy; practice management; medical injuries, medicine or anatomy; ERISA; labor and employment law; elder law; workers' compensation law; and the law relating to long term disability or Medicaid/Medicare claims.

(c) Peer Review. The specialist must comply with the requirements of Rule .2805(d) of this subchapter.

(d) Time for Application. Application for continued certification shall be made not more than 180 days nor less than 80 days prior to the expiration of the prior period of certification.

(e) Lapse of Certification. Failure of a specialist to apply for continued certification in a timely fashion will result in a lapse of certification. Following such lapse, recertification will require compliance with all requirements of Rule .2805 of this subchapter, including the examination.

(f) Suspension or Revocation of Certification. If an applicant's certification has been suspended or revoked during the period of certification, then the application shall be treated as if it were for initial certification under Rule .2805 of this subchapter.

History Note: Statutory Authority G.S. 84-23
Adopted March 2, 2006

.2807 Applicability of Other Requirements

The specific standards set forth herein for certification of specialists in Social Security disability law are subject to any general requirement, standard, or procedure adopted by the board applicable to all applicants for certification or continued certification.

History Note: Statutory Authority G.S. 84-23
Adopted March 2, 2006

Section .2900 Certification Standards for the Elder Law Specialty

.2901 Establishment of Specialty Field

The North Carolina State Bar Board of Legal Specialization (the board) hereby designates elder law as a field of law for which certification of specialists under the North Carolina Plan of Legal Specialization (see Section .1700 of this subchapter) is permitted.

History Note: Statutory Authority G.S. 84-23
Adopted February 5, 2009

.2902 Definition of Specialty

The specialty of elder law is the practice of law involving the counseling and representation of older persons and their representatives relative to the legal aspects of health and long term care planning; public benefits; surrogate decision-making, legal capacity; the conservation, disposition, and administration of the estates of older persons; and the implementation of decisions of older persons and their representatives relative to the foregoing with due consideration to the applicable tax consequences of an action, or the need for more sophisticated tax expertise.

Lawyers certified in elder law must be capable of recognizing issues that arise during counseling and representation of older persons, or their representatives, with respect to abuse, neglect, or exploitation of the older person, insurance, housing, long term care, employment, and retirement. The elder law specialist must also be familiar with professional and non-legal resources and services publicly and privately available to meet the needs of the older persons, and be capable of recognizing the professional conduct and ethical issues that arise during representation.

History Note: Statutory Authority G.S. 84-23
Adopted February 5, 2009

.2903 Recognition as a Specialist in Elder Law

If a lawyer qualifies as a specialist in elder law by meeting the standards set for the specialty, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Elder Law."

History Note: Statutory Authority G.S. 84-23
Adopted February 5, 2009

.2904 Applicability of Provisions of the North Carolina Plan of Legal Specialization

Certification and continued certification of specialists in elder law shall be governed by the provisions of the North Carolina Plan of Legal Specialization (see Section .1700 of this subchapter) as supplemented by these standards for certification.

History Note: Statutory Authority G.S. 84-23
Adopted February 5, 2009

.2905 Standards for Certification as a Specialist in Elder Law

Each applicant for certification as a specialist in elder law shall meet the minimum standards set forth in Rule .1720 of this subchapter. In addition, each applicant shall meet the following standards for certification in elder law:

(a) Licensure and Practice - An applicant shall be licensed and in good standing to practice law in North Carolina as of the date of application. An applicant shall continue to be licensed and in good standing to practice law in North Carolina during the period of certification.

(b) Substantial Involvement - An applicant shall affirm to the board that the applicant has experience through substantial involvement in the practice of elder law.

(1) Substantial involvement shall mean during the five years immediately preceding the application, the applicant devoted an average of at least 700 hours a year to the practice of elder law, but not less than 400 hours in any one year. Practice shall mean substantive legal work done primarily for the purpose of providing legal advice or representation, or a practice equivalent.

(2) Practice equivalent shall mean service as a law professor concentrating in the teaching of elder law (or such other related fields as approved by the specialty committee and the board) for one year or more. Such service may be substituted for one year of experience to meet the five-year requirement set forth in Rule .2905(b)(1) above.

(c) Substantial Involvement Experience Requirements - In addition to the showing required by Rule .2905(b), an applicant shall show substantial involvement in elder law by providing information regarding the applicant's participation, during the five years immediately preceding the date of the application, in at least sixty (60) elder law matters in the categories set forth in Rule .2905(c)(3) below.

(1) As used in this section, an applicant will be considered to have participated in an elder law matter if the applicant:

(A) provided advice (written or oral, but if oral, supported by substantial documentation in the client's file) tailored to and based on facts and circumstances specific to a particular client;

(B) drafted legal documents such as, but not limited to, wills, trusts, or health care directives, provided that those legal documents were tailored to and based on facts and circumstances specific to the particular client;

(C) prepared legal documents and took other steps necessary for the administration of a previously prepared legal directive such as, but not limited to, a will or trust; or

(D) provided representation to a party in contested litigation or administrative matters concerning an elder law issue.

(2) Of the 60 elder law matters:

(A) forty (40) must be in the experience categories listed in Rule .2905(c)(3)(A) through (E) with at least five matters in each category;

(B) ten (10) must be in experience categories listed in Rule .2905(c)(3)(F) through (M), with no more than five in any one category; and

(C) the remaining ten (10) may be in any category listed in Rule .2905(c)(3), and are not subject to the limitations set forth in Rule .2905(c)(2)(B) or (C).

(3) Experience Categories:

(A) Health and personal care planning including giving advice regarding, and preparing, advance medical directives (medical powers of attorney, living wills, and health care declarations) and counseling older persons, attorneys-in-fact, and families about medical and life-sustaining choices, and related personal life choices.

(B) Pre-mortem legal planning including giving advice and preparing documents regarding wills, trusts, durable general or financial powers of attorney, real estate, gifting, and the financial and tax implications of any proposed action.

(C) Fiduciary representation including seeking the appointment of, giving advice to, representing, or serving as executor, personal representative, attorney-in-fact, trustee, guardian, conservator, representative payee, or other formal or informal fiduciary.

(D) Legal capacity counseling including advising how capacity is determined and the level of capacity required for various legal activities, and representing those who are or may be the subject of guardianship/conservatorship proceedings or other protective arrangements.

(E) Public benefits advice including planning for and assisting in obtain-

ing Medicaid, supplemental security income, and veterans benefits.

(F) Advice on insurance matters including analyzing and explaining the types of insurance available, such as health, life, long term care, home care, COBRA, medigap, long term disability, dread disease, and burial/funeral policies.

(G) Resident rights advocacy including advising patients and residents of hospitals, nursing facilities, continuing care retirement communities, assisted living facilities, adult care facilities, and those cared for in their homes of their rights and appropriate remedies in matters such as admission, transfer and discharge policies, quality of care, and related issues.

(H) Housing counseling including reviewing the options available and the financing of those options such as: mortgage alternatives, renovation loan programs, life care contracts, and home equity conversion.

(I) Employment and retirement advice including pensions, retiree health benefits, unemployment benefits, and other benefits.

(J) Income, estate, and gift tax advice, including consequences of plans made and advice offered.

(K) Public benefits advice, including planning for and assisting in obtaining Medicare, social security, and food stamps.

(L) Counseling with regard to age and/or disability discrimination in employment and housing.

(M) Litigation and administrative advocacy in connection with any of the above matters, including will contests, contested capacity issues, elder abuse (including financial or consumer fraud), fiduciary administration, public benefits, nursing home torts, and discrimination.

(d) Continuing Legal Education - An applicant must earn no less than forty-five (45) hours of accredited continuing legal education (CLE) credits in elder law and related fields during the three full calendar years preceding application and the year of application, with not less than nine (9) credits earned in any of the three calendar years. Related fields shall include the following: estate planning and administration, trust law, health and long term care planning, public benefits, surrogate decision-making, older persons' legal capacity, social security disability, Medicaid/Medicare claims and taxation. No more than twenty-four (24) credits may be earned in the related fields of estate taxation or estate administration.

(e) Peer Review - An applicant must make a satisfactory showing of qualification through peer review. An applicant must provide the names of ten lawyers or judges who are familiar with the competence and qualification of the applicant in the specialty field. Written peer reference forms will be sent by the board or the specialty committee to each of the references. Completed peer reference forms must be received from at least five of the references. All references must be licensed and in good standing to practice in North Carolina and have substantial practice or judicial experience in elder law or in a related field as set forth in Rule .2905(d). An applicant consents to the confidential inquiry by the board or the specialty committee of the submitted references and other persons concerning the applicant's competence and qualification.

(1) A reference may not be related by blood or marriage to the applicant nor may the reference be a partner or associate of the applicant at the time of the application.

(2) The references shall be given on standardized forms mailed by the board to each reference. These forms shall be returned directly to the specialty committee.

(f) Examination - An applicant must pass a written examination designed to demonstrate sufficient knowledge, skills, and proficiency in the field of elder law to justify the representation of special competence to the legal profession and the public. The examination shall be given annually in written form and shall be administered and graded uniformly by the specialty committee or by any ABA accredited elder law certification organization with which the board contracts pursuant to Rule .1716(10) of this subchapter.

History Note: Statutory Authority G.S. 84-23
Adopted February 5, 2009

.2906 Standards for Continued Certification as a Specialist

The period of certification is five years. Prior to the expiration of the certification period, a certified specialist who desires continued certification must apply for continued certification within the time limit described in Rule .2906(d) below. No examination will be required for continued certification. However, each applicant for continued certification as a specialist shall comply with the specific requirements set forth below in addition to any general standards required by the board of all applicants for continued certification.

(a) Substantial Involvement - The specialist must demonstrate that, for each of the five years preceding application, he or she has had substantial involvement in the specialty as defined in Rule .2905(b) of this subchapter.

(b) Continuing Legal Education - The specialist must earn seventy-five (75) hours of accredited continuing legal education (CLE) credits in elder law or related fields during the five calendar years preceding application, with not less than ten (10) credits earned in any calendar year. Related fields shall include the following: estate planning and administration, trust law, health and long term care planning, public benefits, surrogate decision-making, older persons' legal capacity, social security disability, Medicaid/Medicare claims and taxation. No more than forty (40) credits may be earned in the related fields of estate taxation or estate administration.

(c) Peer Review - The specialist must comply with the requirements of Rule .2905(e) of this subchapter.

(d) Time for Application - Application for continued certification shall be made not more than 180 days nor less than 90 days prior to the expiration of the prior period of certification.

(e) Lapse of Certification - Failure of a specialist to apply for continued certification in a timely fashion will result in a lapse of certification. Following such lapse, recertification will require compliance with all requirements of Rule .2905 of this subchapter, including the examination.

(f) Suspension or Revocation of Certification - If an applicant's certification has been suspended or revoked during the period of certification, then the application shall be treated as if it were for initial certification under Rule .2905 of this subchapter.

History Note: Statutory Authority G.S. 84-23
Adopted February 5, 2009

.2907 Applicability of Other Requirements

The specific standards set forth herein for certification of specialists in elder law are subject to any general requirement, standard, or procedure adopted by the board applicable to all applicants for certification or continued certification.

History Note: Statutory Authority G.S. 84-23
Adopted February 5, 2009

appointment to judicial office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

Comment

[1] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

[2] When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

[3] To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized. Adjudicatory officials, not being wholly free to defend themselves, are entitled to receive the support of the bar against such unjust criticism.

[4] While a lawyer as a citizen has a right to criticize such officials publicly, the lawyer should be certain of the merit of the complaint, use appropriate language, and avoid petty criticisms, for unrestrained and intemperate statements tend to lessen public confidence in our legal system. Criticisms motivated by reasons other than a desire to improve the legal system are not justified.

History Note: Statutory Authority G. 84-23

Adopted July 24, 1997; Amended March 1, 2003

RULE 8.3: REPORTING PROFESSIONAL MISCONDUCT

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the North Carolina State Bar or the court having jurisdiction over the matter.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the North Carolina Judicial Standards Commission or other appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6.

(d) A lawyer who is disciplined in any state or federal court for a violation of the Rules of Professional Conduct in effect in such state or federal court shall inform the secretary of the North Carolina State Bar of such action in writing no later than 30 days after entry of the order of discipline.

(e) A lawyer who is serving as a mediator and who is subject to the North Carolina Supreme Court Standards of Professional Conduct for Mediators (the Standards) is not required to disclose information learned during a mediation if the Standards do not allow disclosure. If disclosure is allowed by the Standards, the lawyer is required to report professional misconduct consistent with the duty to report set forth in paragraph (a).

Comment

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] Although the North Carolina State Bar is always an appropriate place to report a violation of the Rules of Professional Conduct, the courts of North Carolina have concurrent jurisdiction over the conduct of the lawyers who appear before them. Therefore, a lawyer's duty to report may be satisfied by reporting to the presiding judge the misconduct of any lawyer who is representing a client before the court. The court's authority to impose discipline on a lawyer found to have engaged in misconduct extends beyond the usual sanctions imposed in an order entered pursuant to Rule 11 of the North Carolina Rules of Civil Procedure.

[3] A report about misconduct is not required where it would involve violation of Rule 1.6. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

[4] If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made to the North Carolina State Bar unless some other agency or court is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

[5] The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the Rules applicable to the client-lawyer relationship.

[6] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers' or judges' assistance program. In that circumstance, providing for an exception to the reporting requirements of paragraphs (a) and (b) of this Rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. For this reason, Rule 1.6 (c) includes in the definition of confidential information any information regarding a lawyer or judge seeking assistance that is received by a lawyer acting as an agent of a lawyers' or judges' assistance program approved by the North Carolina State Bar or the North Carolina Supreme Court. Because such information is protected from disclosure by Rule 1.6, a lawyer is exempt from the reporting requirements of paragraphs (a) and (b) with respect to such information. On the other hand, a lawyer who receives such information would nevertheless be required to comply with the Rule 8.3 reporting provisions to report misconduct if the impaired lawyer or judge indicates an intent to engage in illegal activity; for example, conversion of client funds to his or her use.

[7] The North Carolina Supreme Court has adopted Standards of Professional Conduct for Mediators (the Standards) to regulate the conduct of certified mediators and mediators in court-ordered mediations. Mediators governed by the Standards are required to keep confidential the statements and conduct of the parties and other participants in the mediation, with limited exceptions, to encourage the candor that is critical to the successful resolution of legal disputes. Paragraph (e) recognizes the concurrent regulatory function of the Standards and protects the confidentiality of the mediation process. Nevertheless, if the Standards allow disclosure, a lawyer serving as a mediator who learns of or observes conduct by a lawyer that is a violation of the Rules of Professional Conduct is required to report consistent with the duty set forth in paragraph (a) of this Rule. In the event a lawyer serving as a mediator is confronted with professional misconduct by a lawyer participating in a mediation that may not be disclosed pursuant to the Standards, the lawyer/mediator should consider withdrawing from the mediation or taking such other action as may be required by the Standards. See, e.g., N.C. Dispute Resolution Commission Advisory Opinion 10-16 (February 26, 2010).

History Note: Statutory Authority G. 84-23

Adopted July 24, 1997; Amended March 1, 2003; October 7, 2010

ETHICS OPINION NOTES

CPR 342. An attorney is not obligated to report violations of the law committed by nonlawyers.

RPC 17. An attorney who acquires knowledge of apparent misconduct must report the matter to the State Bar.

RPC 84. An attorney may not condition settlement of a civil dispute on an agreement not to report lawyer misconduct.

RPC 127. An attorney must report information to the State Bar concerning another attorney's disbursement of conditionally delivered settlement proceeds without satisfying all conditions precedent if the disbursement was made in knowing disregard of such conditions and if such information is not confidential.

RPC 243. Opinion analyzes whether conduct "raises a substantial question" as to a lawyer's honesty, trustworthiness, or fitness so as to require reporting to the State Bar.

2001 FEO 5. Disclosures made during a LAP support group meeting are confidential and not reportable to the State Bar under Rule 8.3.

2003 FEO 2. A lawyer must report a violation of the Rules of Professional Conduct as required by Rule 8.3(a) even if the lawyer's unethical conduct stems from mental impairment (including substance abuse).

2009 FEO 2. A closing lawyer who reasonably believes that a title company engaged in the unauthorized practice of law when preparing a deed must report the lawyer who assisted the title company but may close the transaction if the client consents and doing so is in the client's interest.

RULE 8.4: MISCONDUCT

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(g) intentionally prejudice or damage his or her client during the course of the professional relationship, except as may be required by Rule 3.3.

Comment

[1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client or, in the case of a government lawyer, investigatory personnel, of action the client, or such investigatory personnel, is lawfully entitled to take.

[2] Many kinds of illegal conduct reflect adversely on a lawyer's fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation. A lawyer's dishonesty, fraud, deceit, or misrepresentation is not mitigated by virtue of the fact that the victim may be the lawyer's partner or law firm. A lawyer who steals funds, for instance, is guilty of the most serious disciplinary violation regardless of whether the victim is the lawyer's employer, partner, law firm, client, or a third party.

[3] The purpose of professional discipline for misconduct is not punishment, but to protect the public, the courts, and the legal profession. Lawyer discipline affects only the lawyer's license to practice law. It does not result in incarceration. For this reason, to establish a violation of paragraph (b), the burden of proof is the same as for any other violation of the Rules of Professional Conduct: it must be shown by clear, cogent, and convincing evidence that the lawyer committed a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer. Conviction of a crime is conclusive evidence that the lawyer committed a criminal act although, to establish a violation of paragraph (b), it must be shown that the criminal act reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer. If it is established by clear, cogent, and convincing evidence that a lawyer committed a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, the lawyer may be disciplined for a violation of paragraph (b) although the lawyer is never prosecuted or is acquitted or pardoned for the underlying criminal act.

[4] A showing of actual prejudice to the administration of justice is not required to establish a violation of paragraph (d). Rather, it must only be shown that the act had a reasonable likelihood of prejudicing the administration of justice. For example, in *State Bar v. DuMont*, 52 N.C. App. 1, 277 S.E.2d 827 (1981), modified on other grounds, 304 N.C. 627, 286 S.E.2d 89 (1982), the defendant was disciplined for advising a witness to give false testimony in a deposition even though the witness corrected his statement prior to trial. The phrase "conduct prejudicial to the administration of justice" in paragraph (d) should be read broadly to proscribe a wide variety of conduct, including conduct that occurs outside the scope of judicial proceedings. In *State Bar v. Jerry Wilson*, 82 DHC 1, for example, a lawyer was disciplined for conduct prejudicial to the administration of justice after forging another individual's name to a guarantee agreement, inducing his wife to notarize the forged agreement, and using the agreement to obtain funds.

[5] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[6] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

History Note: Statutory Authority G. 84-23

Adopted July 24, 1997; Amended March 1, 2003

ETHICS OPINION NOTES

CPR 110. An attorney may not advise a client to seek Dominican divorce knowing that the client will return immediately to North Carolina and continue residence.

CPR 168. An attorney may file personal bankruptcy.

CPR 188. An attorney may not draw deeds or other legal instruments based on land surveys made by unregistered land surveyors.

CPR 342. An attorney should not close a loan where the transaction is conditioned by the lender upon the placement of title insurance with a particular company.

CPR 369. An attorney may close a loan if the lender merely suggests rather than requires the placement of title insurance with a particular company.

RPC 127. An attorney may not deliberately release settlement proceeds which were conditionally delivered without satisfying all conditions precedent.

RPC 136. An attorney may notarize documents which are to be used in legal proceedings in which the attorney appears.

RPC 143. A lawyer who represents or has represented a member of the city council may represent another client before the council provided the lawyer does not attempt improperly to influence the council.

RPC 152. The prosecutor and the defense attorney must see that all material terms of a negotiated plea are disclosed in response to direct questions when the plea is entered in open court.

RPC 159. An attorney may not participate in the resolution of a civil dispute involving allegations against a psychotherapist of sexual involvement with a patient if the settlement is conditioned upon the agreement of the complaining party not to report the misconduct to the appropriate licensing board.

RPC 162. A lawyer may not communicate with the opposing party's nonparty treating physician about the physician's treatment of the opposing party unless the opposing party consents.

RPC 171. A lawyer may tape record a conversation with an opposing lawyer without disclosure to the opposing lawyer.

RPC 180. A lawyer may not passively listen while the opposing party's nonparty treating physician comments on his or her treatment of the opposing party unless the opposing party consents to the communication.

RPC 192. A lawyer may not listen to an illegal tape recording made by his client nor may he use the information on the illegal tape recording to advance his client's case.

RPC 197. A prosecutor must notify defense counsel, jail officials, or other appropriate persons to avoid the unnecessary detention of a criminal defendant after the charges against the defendant have been dismissed by the prosecutor.

RPC 204. It is prejudicial to the administration of justice for a prosecutor to offer special treatment to individuals charged with traffic offenses or minor

crimes in exchange for a direct charitable contribution to the local school system.

RPC 221. Absent a court order or law requiring delivery of physical evidence of a crime to the authorities, a lawyer for a criminal defendant may take possession of evidence that is not contraband to examine, test, or inspect the evidence. The lawyer must return inculpatory physical evidence that is not contraband to the source and advise the source of the legal consequences pertaining to the possession or destruction of the evidence.

RPC 236. A lawyer may not issue a subpoena containing misrepresentations as to the pendency of an action, the date or location of a hearing, or a lawyer's authority to obtain documentary evidence.

RPC 243. It is prejudicial to the administration of justice for a prosecutor to threaten to use his discretion to schedule a criminal trial to coerce a plea agreement from a criminal defendant.

98 FEO 2. A lawyer may explain the effect of service of process to a client but may not advise a client to evade service of process.

98 FEO 19. Opinion provides guidelines for a lawyer representing a client with a civil claim that also constitutes a crime.

99 FEO 2. A defense lawyer may suggest that the records custodian of plaintiff's medical record deliver the medical record to the lawyer's office in lieu of an appearance at a noticed deposition provided the plaintiff's lawyer consents.

2000 FEO 8. A lawyer acting as a notary must follow the law when acknowledging a signature on a document.

2001 FEO 12. A closing lawyer may not counsel or assist a client to affix excess excise tax stamps on an instrument for registration with the register of deeds.

2003 FEO 5. Neither a defense lawyer nor a prosecutor may participate in the misrepresentation of a criminal defendant's prior record level in a sentencing proceeding even if the judge is advised of the misrepresentation and does not object.

2003 FEO 11. A departed lawyer must deal honestly with the members of her former firm when dividing a legal fee.

2005 FEO 3. A lawyer may not threaten to report an opposing party or a witness to immigration officials to gain an advantage in civil settlement negotiations.

2007 FEO 2. A lawyer may not take possession of a client's contraband if possession is itself a crime and, unless there is an exception allowing disclosure of confidential information, the lawyer may not disclose confidential information relative to the contraband.

2008 FEO 3. A lawyer may assist a pro se litigant by drafting pleadings and giving advice without making an appearance in the proceeding and without disclosing or ensuring the disclosure of his assistance to the court unless required to do so by law or court order.

2008 FEO 4. A lawyer may issue a subpoena in compliance with Rule 45 of the Rules of Civil Procedure which authorizes a subpoena for the production of documents to the lawyer's office without the need to schedule a hearing, deposition or trial.

2008 FEO 15. Provided the agreement does not constitute the criminal offense of compounding a crime and is not otherwise illegal, and does not contemplate the fabrication, concealment, or destruction of evidence, a lawyer may participate in a settlement agreement of a civil claim that includes a non-reporting provision prohibiting the plaintiff from reporting the defendant's conduct to law enforcement authorities.

2008 FEO 14. It is not an ethical violation when a lawyer fails to attribute or obtain consent when incorporating into his own brief, contract or pleading excerpts from a legal brief, contract or pleading written by another lawyer.

RULE 8.5: DISCIPLINARY AUTHORITY; CHOICE OF LAW

(a) Disciplinary Authority. A lawyer admitted to practice in North Carolina is subject to the disciplinary authority of North Carolina, regardless of where the lawyer's conduct occurs. A lawyer not admitted in North Carolina is also subject to the disciplinary authority of North Carolina if the lawyer renders or offers to render any legal services in North Carolina. A lawyer may be subject to the disciplinary authority of both North Carolina and another jurisdiction for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of North Carolina, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct.

A lawyer is not subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

Comment

Disciplinary Authority

[1] It is longstanding law that conduct of a lawyer admitted to practice in North Carolina is subject to the disciplinary authority of North Carolina. Extension of the disciplinary authority of North Carolina to other lawyers who render or offer to render legal services in North Carolina is for the protection of the citizens of North Carolina.

Choice of Law

[2] A lawyer may be potentially subject to more than one set of rules of professional conduct which impose different obligations. The lawyer may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to practice before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice. Additionally, the lawyer's conduct might involve significant contacts with more than one jurisdiction.

[3] Paragraph (b) seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession). Accordingly, it takes the approach of (i) providing that any particular conduct of a lawyer shall be subject to only one set of rules of professional conduct, (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions, and (iii) providing a safe harbor for lawyers who act reasonably in the face of uncertainty.

[4] Paragraph (b)(1) provides that as to a lawyer's conduct relating to a proceeding pending before a tribunal, the lawyer shall be subject only to the rules of the jurisdiction in which the tribunal sits unless the rules of the tribunal, including its choice of law rule, provide otherwise. As to all other conduct, including conduct in anticipation of a proceeding not yet pending before a tribunal, paragraph (b)(2) provides that a lawyer shall be subject to the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in another jurisdiction, the rules of that jurisdiction shall be applied to the conduct. In the case of conduct in anticipation of a proceeding that is likely to be before a tribunal, the predominant effect of such conduct could be where the conduct occurred, where the tribunal sits or in another jurisdiction.

[5] When a lawyer's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer's conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer is not subject to discipline under this Rule.

[6] If North Carolina and another admitting jurisdiction were to proceed against a lawyer for the same conduct, they should, applying this rule, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct, and in all events should avoid proceeding against a lawyer on the basis of two inconsistent rules.

[7] The choice of law provision applies to lawyers engaged in transnational practice, unless international law, treaties or other agreements between competent regulatory authorities in the affected jurisdictions provide otherwise.

History Note: Statutory Authority G. 84-23

Adopted July 24, 1997; Amended March 1, 2003

ing procedures are reasonable, taking into account such variables as the size of the law firm, the type of practice, the cost of maintaining conflict checking records over a period of time, and the risk of failing to discover an existing conflict of interest. Regardless of the amount of time that conflict checking information is maintained, lawyers have a duty to avoid any known conflicts and to address conflicts made known to them by opposing or third parties.

As a minimum standard for what constitutes reasonable care, the law firm must convert conflict checking data for at least the last six years to the new program. RPC 209. The law firm does not need to convert conflict checking data that is maintained in some other format by the law firm, i.e., index card filing system, so long as the firm has some means of searching the data for conflicts. The law firm should check with its malpractice carrier to determine whether the carrier has different requirements.

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October 23, 2009

Supervising a Nonlawyer Appearing in an Unemployment Hearing

Opinion rules that a lawyer must provide appropriate supervision to a nonlawyer appearing pursuant to N.C. Gen. Stat. A796-17(b) on behalf of a claimant or an employer in an unemployment hearing.

Inquiry #1:

N.C. Gen. Stat. A796-17(b) allows a non-lawyer to represent employers in unemployment hearings provided the non-lawyer is supervised by a North Carolina licensed lawyer. The statute does not require the lawyer to be present at the unemployment hearing:

> (b) Representation - Any claimant or employer who is a party to any proceeding before the [Employment Security] Commission may be represented by (i) an attorney; or (ii) any person who is supervised by an attorney; however, the attorney need not be present at any proceeding before the commission.

Attorney A is contacted by Corporation B, a business entity that would like to have its employees represent employers in unemployment hearings. As stated in a letter to Attorney A, Corporation B is looking for a lawyer to supervise the "corporation, its employees, and agents" in the representation of employers in unemployment hearings in North Carolina. May Attorney A accept and provide Corporation B with a letter of supervision that would indicate that Attorney A is supervising the corporation and its employees in the representation of employers in unemployment hearings?

Opinion #1:

No. N.C. Gen. Stat. A784-5 prohibits the practice of law by a business corporation. Rule 5.5(d) prohibits a lawyer from assisting in the unauthorized practice of law. Attorney A may not agree to supervise Corporation B or its employees and may not provide a letter of supervision to Corporation B.

Inquiry #2:

If Corporation B were not a corporation but another form of business entity, would the answer to Inquiry #1 change?

Opinion #2:

No.

Inquiry #3:

Attorney A is contacted by C, a nonlawyer who would like to act as a claimant's or an employer's representative pursuant to N.C. Gen. Stat. A796-17(b). C asks Attorney A to give her a letter of supervision "for any and all unemployment hearings." The requested letter would not be limited to a specific pending unemployment claim, but would be used for any claim upon which C might represent a claimant or an employer in the future. On a periodic basis, C would provide Attorney A with a list of claims upon which she provided representation.

May Attorney A provide the letter of supervision to C?

Opinion #3:

Unless Attorney A will provide appropriate supervision to C in every unemployment hearing in which she appears, Attorney A may not provide the letter of supervision.

Although N.C. Gen. Stat. A796-17(b) does not require the lawyer to be physically present at a hearing, it contemplates that a lawyer will supervise a nonlawyer representative. Moreover, Rule 5.3 requires a lawyer to supervise the conduct of any nonlawyer who is retained or associated with the lawyer. Therefore, the lawyer must provide appropriate supervision under the circumstances. *See* RPC 216 (lawyer may supervise nonlawyer who is not employee, but lawyer is responsible for work product). Appropriate supervision would include determining the ability and knowledge of the nonlawyer before agreeing that the nonlawyer may appear at a hearing without the lawyer. Tt would also require the lawyer to have specific knowledge of and provide oversight for each claim to be handled by the nonlawyer.

A "letter of supervision" that represents that a lawyer is supervising a nonlawyer must be a truthful communication as required by Rule 7.1. If Attorney A is not going to supervise C with regard to each individual unemployment hearing, then the letter is a sham and Attorney A is assisting C in the unauthorized practice of law.

Inquiry #4:

C asks Attorney A to prepare and sign a letter of representation for C with blank spaces so that C may fill in the blanks with the identifying information for each hearing in which she represents an employer. May Attorney A provide such a letter?

Opinion #4:

See Opinion #3.

2009 Formal Ethics Opinion 11

July 23, 2010

Representing Debtor in Bankruptcy When Lender is Current Client

Opinion rules that a lawyer may undertake the representation of a debtor in a Chapter 13 bankruptcy, although the lender is lawyer's current client, if the lawyer reasonably believes that he will be able to provide competent and diligent representation to both clients and both clients give informed consent.

Inquiry #1:

Lawyer regularly represents Lender in various matters. Lawyer is approached by Client to represent Client in an individual Chapter 13 bankruptcy. Lender has made a loan to Client. To secure the repayment of the loan, Lender holds a first priority deed of trust on Client's residence, a first priority deed of trust on Client's commercial building, and a first priority lien on Client's vehicle. Lawyer currently represents Lender in other matters, but not with regard to the indebtedness of Client to Lender.

As the lawyer for Client in the Chapter 13 bankruptcy, Lawyer will be responsible for reviewing documentation to determine whether Lender and other secured creditors have valid and enforceable security interests in or liens on Client's property. May Lawyer undertake the representation of Client in the Chapter 13 bankruptcy if Lender and Client consent?

Opinion #1:

Lawyer may undertake the representation of Client if Lawyer reasonably believes that he will be able to provide competent and diligent representation to Client in the bankruptcy action, while adequately protecting Lender's interests in those actions or matters where Lawyer represents Lender. Both Client and Lender must give their informed consent to the representation, confirmed in writing.

Because Lawyer currently represents Lender, Lawyer has a concurrent conflict of interest in representing Client in a bankruptcy action in which Lender is a creditor. See Rule 1.7(a). Comment [6] to Rule 1.7 provides that "absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated." Consent is necessary because the client as to whom the representation is adverse may feel betrayed, and the resulting damage to the client-lawyer relationship could impair the lawyer's ability to represent the client effectively. On the other hand, the client on whose behalf the adverse representation is undertaken may fear that the lawyer will pursue that client's case less effectively out of deference to the other client.

For client consent to cure the conflict, the lawyer must have a reasonable basis for believing that he will be able to provide competent and diligent representation to both clients. It is improper to represent one client asserting a claim against another in the same litigation, even with informed consent. *See*

Rule 1.7, cmt. [17]. Also, if a specific rule, statute, or decision forbids dual representation in the particular context, client consent is irrelevant. *See* Rule 1.7, cmt. [16]. Outside these situations, the lawyer must evaluate objectively whether he will be able to provide competent representation to both clients. The lawyer should consider whether a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances.

In the instant scenario, the interests of the lender and the debtor are adverse. Lender would benefit if Lawyer determines that Lender's deeds of trust and liens are valid and enforceable. Conversely, Debtor would benefit from an opposite finding. However, Lawyer would only be representing the debtor in this particular action. If Lawyer concludes that he would be able to provide competent and diligent representation to Client in the bankruptcy action, while adequately protecting Lender's interests in those actions or matters where Lawyer represents Lender, Lawyer may seek the clients' informed consent to the bankruptcy representation. If Lawyer cannot reasonably conclude that the interests of both clients would be adequately protected if he represents Client in the bankruptcy action, Lawyer must decline the representation. See Rule 1.7(b).

Pursuant to Rule 1.0(f), "informed consent" denotes the "agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation appropriate to the circumstances." A lawyer must provide enough information for his client to make an informed decision, such as why the interests are adverse, how the representation may be affected, what risks are involved, and what other options are available. The information should be conveyed to each client in a manner consistent with the clients' level of sophistication. When a lawyer is seeking consent from an unsophisticated individual client, more disclosure and explanation will be required. The client's mere knowledge of the existence of the lawyer's other representation will not constitute sufficient disclosure.

Inquiry #2:

Lawyer regularly represents Lender in various matters. Lender has made a loan to Client. To secure the repayment of the loan, Lender holds a first priority deed of trust on Client's residence, a first priority deed of trust on Client's commercial building, and a first priority lien on Client's vehicle. Lawyer currently represents Lender in other matters, but not with regard to the indebtedness of Client to Lender.

Lawyer is approached by Client to represent Client in an individual Chapter 13 bankruptcy. The loan from Lender to Client has matured and Client wants to extend the maturity date of the loan. May Lawyer represent Client in negotiations with Lender?

Opinion #2:

Yes. *See* Opinion #1.

Inquiry #3:

May Lawyer represent Client as to the extension of the maturity date of the loan if Client and Lender reach an agreement for an extension without Lawyer's involvement? If so, may Lawyer file a motion seeking bankruptcy court approval of a refinancing agreement between Client and Lender in order to extend the maturity date of the loan, and then represent Client at the hearing on the motion?

Opinion #3:

Yes. *See* Opinion #1.

2009 Formal Ethics Opinion 12

January 15, 2010

Preparation of Documents for Unrepresented Adverse Party

Opinion rules that a lawyer may prepare an affidavit and confession of judgment for an unrepresented adverse party provided the lawyer explains who he represents and does not give the unrepresented party legal advice; however, the lawyer may not prepare a waiver of exemptions for the adverse party.

Background:

Supply Company is owed money by Contractor. Contractor is not represented by counsel. Contractor agrees to enter into an affidavit and confession of judgment in favor of Supply Company. The affidavit and confession of judgment is prepared by Supply Company's lawyer. The affidavit and confession of judgment contains a provision that states that Contractor "waives with prejudice any right it may have to appeal, modify, stay, or vacate the judgment, and it expressly waives the 30-day deadline to appeal the entry of the judgment."

Supply Company's lawyer also prepares a document for Contractor to sign entitled "Waiver of Exemptions." The document provides that Contractor has consulted with counsel, has previously executed a confession of judgment in favor of Supply Company, has been advised by counsel of the right to designate property, and has freely, knowingly, and voluntarily waived any and all exemptions provided by Article 16 of Chapter 1C of the North Carolina General Statutes (Exempt Property) and any and all exemptions afforded by Article X (Homesteads and Exemptions) of the North Carolina Constitution.

Inquiry #1:

May the lawyer for Supply Company include language in the affidavit and confession of judgment waiving Contractor's right to appeal, stay, or vacate the judgment and waiving the 30-day deadline to appeal the entry of the judgment?

Opinion #1:

Yes. However, the language in the affidavit and confession of judgment must be clear enough to put Contractor on notice that it is waiving important rights and must be sufficient to make Contractor's waiver knowing, intelligent, and voluntary.

Rule 4.3(a) provides that, in dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not give legal advice to the person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such person are or have a reasonable possibility of being in conflict with the interests of the client.

Comment [2] to Rule 4.3 clarifies that Rule 4.3 does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person. So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter and may prepare documents that require the unrepresented person's signature.

Whether a lawyer may submit documents to an unrepresented person for signature depends upon whether the lawyer's actions are categorized as the rendition of legal advice or mere communication. The Ethics Committee has previously ruled that a lawyer may provide an unrepresented party with a confession of judgment for execution provided the lawyer does not undertake to advise the unrepresented party concerning the meaning or significance of the document or to state or imply that the lawyer is disinterested. See RPC 165. However, it is unethical for a lawyer to provide an unrepresented party with a document that appears solely to represent the position of the adverse party, such as an answer. *See* CPR 121, CPR 296, RPC 165.

The prohibitions set out in the prior ethics opinions are consistent with Rule 1.7(b)(3), which prohibits a lawyer from representing opposing parties in the same litigation. Providing an opposing party with a response to a complaint, or other responsive pleading, is tantamount to representing that party. Pursuant to RPC 114, when a lawyer gives drafting assistance to a litigant who wishes to proceed *pro se*, an attorney-client relationship is formed and the Rules of Professional Conduct, particularly those concerning confidentiality and conflict of interest, apply.

The affidavit and confession of judgment is not a responsive pleading and does not solely represent the position of Contractor. Rather, the document represents the terms upon which Supply Company is willing to resolve its claim against Contractor. So long as Supply Company's lawyer has explained that he represents an adverse party and is not representing Contractor, Lawyer for Supply Company may negotiate the terms of the settlement and may prepare the document for Contractor's signature.

Inquiry #2:

The waiver of exemptions provides that Contractor has consulted with counsel, has previously executed a confession of judgment in favor of Supply Company, has been advised by counsel of the right to designate property, and has freely, knowingly, and voluntarily waived any and all statutory and constitutional exemptions. May Lawyer for Supply Company prepare the waiver of exemptions to be signed by Contractor and thereafter filed with the court?

Opinion #2:

No. First, the waiver of exemptions may not state that Contractor has consulted with counsel and has been advised by counsel of the right to designate property unless Contractor has actually received such counsel and advice. If Contractor is unrepresented in the matter, the statement cannot be included in the waiver of exemptions.

Second, Lawyer must determine whether a waiver of either the constitutional or statutory exemptions is legally permissible. Statutory and constitutional exemptions may be waived only under specific circumstances as set forth in the statutes and case law. To the extent that any such waiver is not recognized under the law, Lawyer may not insert such a waiver provision in the documents presented to the unrepresented party.

Finally, if Contractor is unrepresented, it is difficult to imagine how Contractor made a "knowing" waiver of all statutory and constitutional exemptions.

2009 Formal Ethics Opinion 14

October 29, 2010

Placing Client's Title Insurance in Agency in Which Lawyer's Spouse Has an Ownership Interest

Opinion rules that a lawyer participating in a real estate transaction may not in such transaction place his client's title insurance in a title insurance agency in which the lawyer's spouse has any ownership interest.

Inquiry:

May Lawyer participating in a real estate transaction place his client's title insurance with a title insurance agency in which Lawyer's spouse has an ownership interest?

Opinion:

No. Rule 1.7 provides that a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if the representation of one or more clients may be materially limited by a personal interest of the lawyer. Rule 1.7(a)(2).

The Ethics Committee has previously examined personal conflicts of interest between title insurance agencies and real estate closing lawyers. In CPR 101 (1977), the Ethics Committee concluded that it is unethical for a lawyer who owns a substantial interest, directly or indirectly, in a title insurance agency, and who acts as a lawyer in a real estate transaction insured by the title insurance agency, to receive any compensation or benefit from the title insurance agency regardless of whether the ownership interest is disclosed to the client.

In RPC 185 (1994), the Ethics Committee determined that even an insubstantial interest in a title insurance agency could materially impair the judgment of the closing lawyer. The opinion provides that if a title agency, and, therefore, indirectly a closing lawyer who owns an interest in the title agency, will receive compensation from the client as a result of the closing of the transaction, the lawyer's personal interest in having the title insurance agency receive its compensation could conflict with the lawyer's duty to close the transaction only if it is in the client's best interest. The opinion held that the conflict of interest is too great to be allowed even if the client wishes to consent.

In an unpublished ethics decision, ED 97-6 (1998), the Ethics Committee examined a fact scenario substantially similar to the one currently presented and determined that it is a conflict of interest for a lawyer to perform title work and place the title insurance with a title insurance agency operated by the lawyer's spouse.

The instant scenario presents a personal conflict of interest. The lawyer's personal interest in having his spouse's title insurance agency receive its compensation may conflict with the lawyer's duty to close the transaction only if it is in the client's best interest. In addition, the lawyer's personal relationship with the owner of the title insurance company will influence the lawyer's choice of the spouse's company as the insurer, as well as the vigorousness of the lawyer's negotiations with the title company on his client's behalf. Issues of title insurance coverage may have to be negotiated between the closing lawyer and the insurer. The lawyer's client and the insurer will necessarily have competing interests as to the extent of the coverage and the amount of the premium.

The conflict of interest is too great to be allowed, even with the client's informed consent. A closing lawyer must be able to make an independent recommendation of a title insurance company to his client, unbiased by any personal interest. In addition, a lawyer opining on title to property should be independent from the title insurance agency issuing the title insurance in reliance upon that opinion. This is consistent with the emphasis that the North Carolina legislature has placed on the professional and financial independence of the closing lawyer from the title insurance agency. *See, e.g.* N.C.G.S. § 58-26-1(a)(title insurance company may not issue insurance as to North Carolina real property unless the company has obtained the opinion of a North Carolina licensed attorney who is *not an employee or agent of the company*) and N.C.G.S. § 58-27-5(a) (lawyer who performs legal services incident to a real estate sale may not receive any payment, directly or indirectly, in connection with the issuance of title insurance for any real property which is a part of such sale).

This scenario differs from RPC 188, in which the Ethics Committee concluded that a lawyer may represent the buyer and/or lender in a real estate transaction brokered by the lawyer's spouse. RPC 188 provides that, although there is a conflict, clients may consent to the representation. RPC 188 can be distinguished because the lawyer did not choose the real estate broker for his client and was not involved in negotiations with the real estate broker as to the terms of the real estate sales contract.

2009 Formal Ethics Opinion 15

January 15, 2010

Dismissal of DWI Charge by Prosecutor When Insufficient Evidence Due to Suppression Order

Opinion rules that a prosecutor must dismiss a DWI charge when the prosecutor fails to appeal a court order suppressing evidence from the traffic stop thereby eliminating the evidence necessary to prove the charge.

Inquiry:

In a Driving While Impaired (DWI) case in district court, a defendant makes a pretrial motion to suppress all evidence obtained from the stop of his vehicle pursuant to N.C. Gen. Stat. A720-38.6(a). After considering the evidence offered at the pretrial hearing, the district court judge enters an order pursuant to N.C. Gen. Stat. A720-38.6(f) indicating his/her preliminary inclination to grant the defendant's pretrial motion because the stop was unconstitutional in violation of the Fourth Amendment. The prosecutor does not appeal this preliminary ruling to superior court and the district court judge's decision becomes a final judgment pursuant to the statute. The district court judge enters a final order suppressing the evidence from the vehicle stop. The evidence from the vehicle stop was the only evidence of the alleged crime. The case is re-calendared.

May the prosecutor call the case for trial, arraign the defendant (who pleads not guilty), call no witnesses or otherwise offer evidence, and rest the case, thus requiring the judge to dismiss the case; or does the prosecutor have an ethical duty to dismiss the case after all evidence of guilt is suppressed pursuant to the pretrial motion?

Opinion:

A lawyer has an ethical duty, under Rule 3.1, not to bring a proceeding unless there is a basis in law and in fact for doing so that is not frivolous. In light of this duty, a prosecutor who knows that she has no admissible evidence supporting a DWI charge to present at trial must dismiss the charge prior to calling the case for trial.

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July 23, 2010

Including Information on Verdicts, Settlements, and Memberships on a Website

Opinion rules that a website may include a case summary section showcasing successful verdicts and settlements if the section contains factually accurate information accompanied by an appropriate disclaimer and that any reference on the website to membership in an organization with a self-laudatory name must comply with the requirements of 2003 FEO 3.

Editor's Note: Upon adoption of this proposed opinion by the State Bar Council, 2000 FEO 1 will be overruled to the extent it is inconsistent and the Ethics Committee will recommend that the council withdrawal 2009 FEO 6.

Inquiry #1:

Is it possible for a law firm to include on its firm website a section showcasing successful verdicts and settlements without violating Rule 7.1(a)(2)?

Opinion #1:

Yes. Rule 7.1 provides that a lawyer "shall not make a false or misleading communication about the lawyer or the lawyer's services." The rule further provides that a communication is false or misleading if it "is likely to create an unjustified expectation about results the lawyer can achieve." Rule 7.1(a)(2). At issue is whether a law firm can provide information on its past successes without creating unjustified expectations.

Lawyer advertising is commercial speech that is protected by the First Amendment. Bates v. State Bar of Arizona, 433 U.S. 350 (1977). However, lawyer advertisements may not be deceptive or misleading. Id. The United States Supreme Court has noted that advertising by professionals poses special risks of deception because the public lacks sophistication concerning legal services. *In re R.M.J.*, 455 U.S.191 (1982). Accordingly, warnings or disclaimers might be appropriately required in lawyer advertisements to dissipate the possibility of consumer confusion or deception. *Zauderer v. Ohio Disciplinary Counsel*, 471 U.S. 626 (1985).

Consumers of legal services benefit from the dissemination of accurate information in choosing legal representation. *See* DC Legal Ethics Comm., Op. 335 (2006). Lawyers also benefit from the dissemination of accurate information when seeking to enlist the aid of co-counsel in a particular matter. A consumer researching law firms on the internet expects a law firm's website to include information about the firm's past successes, and many firm websites currently include a "verdict and settlements" section. The law firm's duty is to provide that information to the consumer without creating an unjustified expectation about the results the lawyer can achieve. Comment [3] to Rule 7.1 provides that an advertisement that truthfully reports a lawyer's achievements may be misleading "if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case."

Previously, the Ethics Committee determined that statements about a lawyer's or a law firm's record in obtaining favorable verdicts was permissible on a firm's website if the information was provided in a certain context. See 2000 FEO 1. According to the opinion, the context would have to include the following:

> disclosure of the lawyer's or firm's history of obtaining unfavorable, as well as favorable, verdicts and settlements; the lawyer's or firm's success in actually collecting favorable verdicts; the types of cases handled and their complexity; whether liability and/or damages were contested; and whether the opposing party or parties were represented by legal counsel. In addition, the verdict record must disclose the period of time examined. Finally, the communication must include a statement that the outcome of a particular case cannot be predicated upon a lawyer's or a law firm's past results.

2000 FEO 1. The requirements set out in 2000 FEO 1 may not be applicable in every scenario and may be so burdensome that they discourage lawyers from providing any information about verdicts and settlements and thereby effectively prevent consumers from getting helpful information.

In considering lawyer advertising, the Oklahoma Bar Association has concluded that a lawyer may advertise specific jury verdicts and settlement amounts if certain requirements are met. The advertisement must be factually accurate; must include an appropriate disclaimer displayed in the same manner and with the same emphasis as the results; must not suggest that the lawyer is promising the same results; must state that settlements are the result of private negotiations between the parties involved that may be affected by factors other than the legal merits of a particular case; and must not violate the lawyer's duty of confidentiality. Oklahoma Ethics Opinion 320 (10/15/04).

By way of example, the Oklahoma Bar opines that a statement in a printed advertisement about the results in a particular case would not violate Rule 7.1 if the statement is accompanied by an equally prominent statement to the effect that each case is different and that prior results should not create an expectation about future results in an individual case. According to the Oklahoma Ethics Committee, such a disclaimer would be "equally prominent" if the disclaimer is presented in the same manner and with the same emphasis as the statements themselves, and if its import is not obscured or minimized by other language or materials in the advertisement. For example, such a disclaimer in a printed advertisement should use the same font and at least the same size print as the statements themselves.

New York has also considered the use of disclaimers in lawyer advertising. The New York State Bar Association Committee on Professional Ethics opined that if client testimonials and reports of past results are misleading, a disclaimer may cure the otherwise misleading information if the disclaimer is sufficiently tailored to address the information that is misleading, and if the disclaimer's placement on the website is such that it is reasonable to expect that anyone who reads the testimonials and reports of past results will read the disclaimer. NY State Bar Assoc. Comm. on Prof'l Ethics, Op. 771 (2003). The committee further opined that the lawyer should "consider the size of the text and the proximity of the disclaimer to the client testimonials or report of past results. If the disclaimer is in a link, the lawyer should also consider the size and placement of the text signaling the reader to access the link and whether this signal sufficiently informs the reader that reviewing the linked disclaimer is material to any assessment of the information conveyed in the advertisement."

We agree with the reasoning of the New York and Oklahoma bars and conclude that a website may include a case summary section showcasing successful verdicts and settlements if the section contains factually accurate information accompanied by an appropriate disclaimer. The disclaimer must be sufficiently tailored to address the information presented in the case summary section. The disclaimer must be displayed on the website in such a manner that it is reasonable to expect that anyone who reads the case summary section will also read the disclaimer. Depending on the information contained in the case summary section, an appropriate disclaimer should point out that the cases mentioned on the site are illustrative of the matters handled by the firm; that case results depend upon a variety of factors unique to each case; that not all results are provided; and that prior results do not guarantee a similar outcome.

Providing a prominently displayed disclaimer that is specifically tailored to the information presented on a webpage regarding a lawyer or law firm's achievements precludes a finding that the webpage is likely to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters.

Inquiry #2:

> Would the following types of information be permitted on a firm website:
> A lawyer's biography referencing a single trial victory in a well-known case or the successful handling of a specific matter;
> A lawyer's biography providing a list of his reported cases, but not including unfavorable reported cases; or
> A lawyer's biography listing "representative matters handled," "recent cases," "recent experience," or the like but only including matters that were favorably resolved for the lawyer's clients?

Opinion #2:

Yes. *See* Opinion #1.

Inquiry #3:

> Would the following types of information be permitted on a firm website:
> A lawyer's biography stating that the lawyer has successfully represented numerous corporations or individuals;
> A lawyer's biography stating that the lawyer has argued and won numerous cases before the North Carolina appellate courts without stating that he has also lost cases before the appellate courts; or
> A lawyer's biography stating that the lawyer has successfully handled cases in a specific area of the law without stating that he has also been unsuccessful on cases in that area of the law?

Opinion #3:

Yes. *See* Opinion #1.

Inquiry #4:

2003 FEO 3 states that a lawyer may only advertise his membership or participation in an organization with a self-laudatory name or designation if certain conditions are satisfied. Does 2003 FEO 3 apply to a lawyer's individual biography on his firm's website?

Opinion #4:

Yes. 2003 FEO 3 states that a lawyer may only advertise his membership or participation in an organization with a self-laudatory name or designation if the following conditions are satisfied: (1) the organization has strict, objective standards for admission that are verifiable and would be recognized by a reasonable lawyer as establishing a legitimate basis for determining whether the lawyer has the knowledge, skill, experience, or expertise indicated by the designated membership; (2) the standards for membership are explained in the advertisement or information on how to obtain the membership standards is provided in the advertisement; (3) the organization has no financial interest in promoting the particular lawyer; and (4) the organization charges the lawyer only reasonable membership fees. The opinion also provides that when the membership information may create unjustified expectations, such as the expectation that a lawyer obtains a million dollar verdict in every case, a disclaimer must be included in the advertisement.

Any reference to membership in such an organization must comply with the requirements of 2003 FEO 3. *See also* 2007 FEO 14 (allowing lawyer to advertise his inclusion in the North Carolina Super Lawyers list but not to claim that he is a "super lawyer").

Inquiry #5:

Does 2003 FEO 3 apply to a firm's general reference to such membership on its website, such as "ten of our lawyers were included in the Legal Elite"?

Opinion #5:

Yes. *See* Opinion #4.

2000 FEO 1 is be overruled to the extent it is inconsistent with this opinion.

2009 Formal Ethics Opinion 17

October 29, 2010

Tacking as Question of Standard of Care

Opinion rules that whether a lawyer rendering a title opinion to a title insurer should tack to an owner's policy of title insurance or a mortgagee's (lender's) policy is a question of standard of care and outside the purview of the Ethics Committee

Inquiry:

RPC 99 holds that the Rules of Professional Conduct do not require personal inspection of all documents in the chain of title so long as a lawyer rendering an opinion on title for real property fully discloses to the client the precise nature and extent of the service being rendered. The opinion further states, "Since title insurers frequently omit exceptions in mortgagees' policies that would appear in owners' policies, tacking should be limited to tacking onto owners' policies."

May a lawyer render a title opinion to a title insurance company by tacking to a mortgagee's (lender's) title insurance policy?

Opinion:

This issue of the appropriate standard of care for rendering a title opinion is outside the purview of the Ethics Committee. To the extent that RPC 99 appeared to opine on the standard of care relative to tacking to an owner's policy versus a mortgagee's (lender's) policy for the purpose of rendering a title opinion, that part of the opinion is withdrawn.

Whether tacking to an owner's policy or a mortgagee's policy, a lawyer's duty is to provide competent representation to his client, consistent with Rule 1.1, and to reasonably consult with the client about the means used to accomplish the client's objectives. Rule 1.4(a)(2). The lawyer must consult with the client before using a method of rendering a title opinion that might present additional risk for the client.

2010 Formal Ethics Opinion 1

April 16, 2010

Representation of Insurance Carrier after Insured Disappears

Opinion rules that a lawyer retained by an insurance carrier to represent an insured whose whereabouts are unknown and with whom the lawyer has no contact may not appear as the lawyer for the insured absent authorization by law or court order.

Inquiry #1:

Attorney was retained by Insurance Carrier to defend Insured in a negligence lawsuit based upon an automobile accident. Insured cannot be located and his whereabouts are unknown. Service by publication was required. May Attorney proceed with the representation, file pleadings on behalf of Insured, and appear in court to defend the case on behalf of Insured?

Opinion #1:

No. To respond to this inquiry, the question of whether a client-lawyer relationship is created between Attorney and Insured must be addressed. Comment [4] of Rule 0.2, *Scope*, provides that "for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists." In most instances, the Ethics Committee declines to offer an opinion that hinges upon a question of law. Nevertheless, the determination of whether a client-lawyer relationship exists is often essential to the committee's interpretation and application of the Rules of Professional Conduct. Moreover, the relevant North Carolina case law is clear. In *Dunkley v. Shoemate*, 350 N.C. 573, 515 S.E. 2d 442 (1999), the Supreme Court held that where a law firm had no contact with the defendant and was not authorized by the defendant to undertake his representation, no lawyer-client relationship existed between the defendant and the lawyers seeking to represent him pursuant to the insurance trust fund for the defendant's employer. The *Dunkley* opinion cites favorably the following statement from *Johnson v. Amethyst Corp.*, 120 N.C. App. 529, 463 S.E. 2d 397 (1995): "[n]o person has the right to appear as another's attorney without the authority to do so, granted by the party for which he [or she] is appearing." *Id.* at 577, 515 S.E. 2d at 444 [quoting *Amethyst Corp.* 120 N.C. App. at 532, 463 S.E. 2d at 400]. The Court also concurred with the statement in *Amethyst Corp.* that, "North Carolina law has long recognized that an attorney-client relationship is based upon principles of agency," and "[t]wo factors are essential in establishing an agency relationship: (1) The agent must be authorized to act for the principal; and (2) The principal must exercise control over the agent.'" *Id.* [quoting *Amethyst Corp.*, 120 N.C. App. at 533-534, 463 S.E. 2d at 400].

Therefore, unless allowed by statute, court order, or subsequent case law, a lawyer may not appear in court for a party who has not authorized the representation and with whom the lawyer has not established a client-lawyer relationship.

Inquiry #2:

Would the response to Inquiry #1 be different if the insurance contract with Insured specifies that Insurance Carrier has the authority to choose legal counsel for Insured and to decide whether to settle the case?

Opinion #2:

No.

Inquiry #3:

Would the response to Inquiry #1 be different if Insured received actual notice of the lawsuit and contacted Insurance Carrier before disappearing?

Opinion #3:

Whether such contact with Insurance Carrier is sufficient to create a client-lawyer relationship with a lawyer selected by Insurance Carrier is a question of fact and law not resolved by the existing case law. However, the Ethics Committee doubts that the two factors required to establish an agency relationship exist in this situation. *See also Dunkley*, 350 N.C. at 578, 515 S.E. 2d at 445 ("RPC 223, Rule 1.2(a), and *Amethyst Corp.* correctly emphasize the principle that a lawyer cannot properly represent a client with whom he has no contact.").

Inquiry #4:

Would the response to Inquiry #1 be different if Insured received notice of the lawsuit and specifically authorized the representation before disappearing?

Opinion #4:

Yes, Attorney may appear in the lawsuit on behalf of Insured if Insured has authorized the representation. However, if Insured cannot thereafter be located, Attorney may not mislead the court about Insured's absence. Rule 3.3(a)(1). Moreover, in the event Insured is not present to participate in the representation, Attorney may have to file a motion to withdraw. Rule 1.2, cmt. [1] (Client has "the ultimate authority to determine the purposes to be served by legal representation85."); Rule 1.16; RPC 223; 03 FEO 16; *see also*

Dunkley, 350 N.C. at 578, 515 S.E. 2d at 445 ("a lawyer cannot properly represent a client with whom he has no contact.").

Inquiry #5:

Would the response to Inquiry #1 be different if the insurance contract contained a provision granting Insurance Carrier the express authority to proceed with the representation on behalf of and in the name of the Insured in the event contact with Insured is lost?

Opinion #5:

This is a question of law that is not resolved by the existing case law and is outside the purview of the Ethics Committee.

Inquiry #6:

Attorney is retained by Insurance Carrier to defend a "John Doe" defendant in an automobile accident case. May Attorney represent "John Doe" in the court proceedings?

Opinion #6:

If the designation of a certain person as "John Doe" is necessary to effect service of process and Attorney concludes that he is able to identify the intended person (e.g., an employee of an insured defendant company), Attorney may work with Insurance Carrier and the defendant company to identify the individual and, once identified, may appear in the lawsuit on behalf of the individual if authorized to do so by the individual. If the identity of "John Doe" cannot be ascertained by Attorney, Insurance Carrier, or another client, whether Attorney may represent "John Doe" in the court proceedings is a question of law outside the purview of the Ethics Committee.

2010 Formal Ethics Opinion 2

April 16, 2010

Obtaining Medical Records From Out of State Health Care Providers

Opinion rules that a lawyer may not serve an out of state health care provider with an unenforceable North Carolina subpoena and may not use documents produced pursuant to such a subpoena.

Inquiry #1:

Lawyer represents the Department of Social Services in a county that borders another state. In a particular case, the relevant hospital records are located out of state. Is it ethical for Lawyer to subpoena the medical records under the authority of N.C. R. Civ. P. 45 knowing that the North Carolina subpoena is unenforceable?

Opinion #1:

No. If the North Carolina subpoena is not enforceable out of state, the lawyer may not misrepresent to the out of state health care provider that it must comply with the subpoena. RPC 236 provides that it is unethical for a lawyer to use the subpoena process to mislead the custodian of documentary evidence as to the lawyer's authority to require the production of such documents. See also Rule 8.4(c) (professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Inquiry #2:

If the records are subpoenaed and the health care provider complies with the subpoena, may Lawyer utilize the medical records?

Opinion #2:

No. Lawyer may not use documents that were produced in reliance on Lawyer's misrepresentation as to Lawyer's authority to require the production of such documents.

2010 Formal Ethics Opinion 4

October 29, 2010

Lawyer Participating in Barter Exchange

Opinion provides guidelines for participation in a barter exchange.

Inquiry:

Lawyer would like to participate in a trade or "barter" exchange that is an association of businesses that exchange goods or services. Members of the barter exchange are paid in barter dollars that can be used to pay other members for their services. For example, a lawyer who is a member prepares a will for a member who is a landscaper and receives barter dollars that can then be used by the lawyer to purchase a variety of services from other members, not solely landscaping services. The barter exchange manager publishes a directory of members and may advertise to members the goods or services available from other members. In addition to an entrance fee and a monthly administrative fee, the exchange manager requires members to pay a cash transaction fee of 10% on the gross value of each purchase from a member through the exchange. For example, if a lawyer provides $500 in services to another member, in addition to the fee paid to the lawyer, the recipient pays a $50 fee to the manager of the exchange for a total payment of $550 (barter dollars and cash) for the legal services.

The barter exchange lists all participating businesses in the "trading network." From this list, a member who would like to buy services or goods selects a business. A "buyer" who needs legal services would select a lawyer from the list of lawyers available in the trading network. Members are encouraged to call the exchange manager to get linked with other members when in need of particular goods or services. Trades between participating businesses are voluntary and the provision of goods or services is between the two participating businesses without interference from the barter exchange or its manager. Members are not under any obligation to use the barter exchange for goods or services and, if a member cannot find a suitable business in the trading network with which to do business, the member may pay cash for goods or services to a business that is not a member of the exchange. Similarly, a member of the exchange is not required to do business with an exchange member who requests goods or services.

The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. No. 97-248, 96 Stat. 324 (1982), recognized the barter exchange manager as the third-party record keeper and clearinghouse for barter transactions among the members of an exchange and also recognized "trade" or "barter" dollars as legal, taxable dollars that may be used as an alternative payment method. Under TEFRA, all trade revenue is treated as taxable income and must be reported using Form 1099-B.

May Lawyer participate in the barter exchange?

Opinion:

Yes, as long as the lawyer's professional judgment is not compromised by participation in the exchange, the lawyer ensures that listings and advertisements of the exchange comply with the requirements for legal advertising, there is full disclosure of the states in which the lawyer is licensed, and clients do not use barter dollars to pay in advance for litigation or other expenses of representation.

This inquiry raises the following questions: (1) whether a lawyer may accept payment for services in a form other than money; (2) whether a barter exchange is a lawyer referral service and, therefore, subject to the restrictions on lawyer referral services; (3) whether a participating lawyer can comply with the advertising and solicitation limitations in the Rules of Professional Conduct; (4) whether payments to the barter exchange violate the prohibition on sharing legal fees with a nonlawyer; and (5) whether clients may pay litigation expenses in barter dollars. Each of these questions is addressed below.

A lawyer may accept payment for legal services in a form other than money. *See* Rule 1.5, cmt. [4]. Therefore, there is no prohibition on accepting barter dollars as payment for legal services.

With regard to lawyer referral services, Rule 7.2(b) provides as follows:

> A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may
>
> (1) pay the reasonable costs of advertisements or communications permitted by this Rule; [and]
>
> (2) pay the usual charges of a not-for-profit lawyer referral service that complies with Rule 7.2....

A lawyer referral service is a service that purports to screen the lawyers who participate and to match prospective clients with suitable participating lawyers. See 04 FEO 1 (online matching service not subject to nonprofit limitation on lawyer referral services). Comment [6] to Rule 7.2 adds that a lawyer referral service:

> is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by laypersons to be consumer-oriented organizations that provide unbiased referrals to lawyers with

appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements.

A barter exchange that provides a complete, impartial list of all participating lawyers, does not purport to recommend or select a lawyer for an exchange member seeking legal services, and does not restrict the number of participating lawyers is not a lawyer referral service.

The next question is whether a participating lawyer can comply with the limitations on lawyer advertising and solicitation in the Rules of Professional Conduct. A lawyer participating in a barter exchange will be responsible for the content of all advertising about the lawyer's services to other members. Rule 7.1(a) allows advertising that is not false or misleading. As long as the trading network list or directory of members and any other advertisement to members of the barter exchange does not include information about a participating lawyer that is false or misleading, a lawyer may be included in the list, directory, or advertisement. In addition, to avoid unauthorized practice of law, the participating lawyer must ensure that all exchange listings, directories, or advertisements identify the states in which the lawyer is licensed.

Rule 7.3(a) prohibits in-person solicitation of prospective clients either by a lawyer or by an agent of a lawyer. If the manager of the exchange, or a third party such as a broker, engages in in-person solicitation of exchange members on behalf of other exchange members, a lawyer who is an exchange member may not allow such solicitation to occur on the lawyer's behalf. If participation in the in-person solicitation or brokerage of services is a condition of membership in the exchange, a lawyer may not be a member of the exchange.

The next question is whether the fee structure for the barter exchange violates the prohibition on sharing legal fees with a nonlawyer in Rule 5.4(a). The manager of the barter exchange charges a cash transaction fee of 10% on the gross value of each purchase from a member through the exchange. The transaction fee is paid by the recipient of the services; the lawyer is not required to give 10% of his fee to the exchange manager. Although prohibited in the context of compensating nonlawyer employees (*see* RPC 147), paying for services of a nonlawyer based upon a percentage of a legal fee is not per se fee sharing. The use of credit cards to pay for legal services has long been allowed, although credit card banks routinely charge a "discount fee" that is a percentage of the legal fee charged to the credit card. *See* CPR 129 (lawyers may accept payment of legal fees by credit card). Paying a percentage fee to a barter exchange manager is no different than paying a discount fee to a credit card bank. The fee is a surcharge on the transaction and is not fee sharing with a nonlawyer. See ABA Formal Opinion 88-356 (1988)(lawyer placement agency's fee based on the amount of the legal fee is not fee splitting).

We agree with the following conclusion of the New York State Bar Association Committee on Professional Ethics in N. Y. State Bar Ass'n. Comm. on Prof'l. Ethics Op. 665 (1994), which allows a lawyer to participate in a barter exchange:

> There are a number of rationales for the prohibition against sharing legal fees with non-lawyers: (1) to avoid the possibility of a nonlawyer interfering with the exercise of the lawyer's professional judgment in representing a client, (2) to ensure that the total fee paid by the client is not unreasonably high, and (3) to ensure that the nonlawyer is not motivated to engage in improper solicitation of business for the lawyer. [Citations omitted.] We do not believe that the proposed barter exchange implicates these concerns so long as the barter exchange exercises no influence over the professional judgment of the lawyer, the lawyer's legal fee complies with [the reasonableness requirement of] DR 2-106(A) of the [New York] Code [of Professional Responsibility], and the exchange sponsor does not engage in in-person solicitation of customers or use written advertising materials that the lawyer/participant could not use.

The last question is whether a member of the barter exchange who contracts with a lawyer may pay in advance for litigation expenses or other expenses of representation by advancing barter dollars to the lawyer. Rule 1.15 requires a lawyer to account for funds entrusted to the lawyer for payment of third parties by depositing those funds into a trust account. Because barter dollars cannot be deposited into a trust account, all advance payments of litigation expenses by a barter exchange client must be paid in cash or by check or credit card.

In summary, a lawyer may participate in a barter exchange as long as the exchange exercises no influence over the professional judgment of the lawyer; the listing and advertisements of the exchange are truthful, not misleading, and identify the states in which the lawyer is licensed; there is no in-person solicitation of members by the barter exchange manager or a broker on behalf of the lawyer; and advance payments of litigation expenses or other expenses of representation are not in barter dollars.

2010 Formal Ethics Opinion 5

April 16, 2010

Client-Lawyer Relationship in Child Support Enforcement Actions

Opinion rules that the lawyer for a child support enforcement program that brings an action for child support on behalf of the government does not have a client-lawyer relationship with the custodian of the children.

Inquiry #1:

Title IV-D of the Social Security Act, 42 U.S.C.S. 651 et seq., requires each state to establish a child support enforcement (CSE) agency to provide services for the establishment and collection of child support for dependent children who are recipients of public assistance. The act also requires the CSE agency to provide assistance in the collection of child support to a custodian of a dependent child not receiving public assistance if the custodian applies to the agency for such assistance. The Child Welfare Act, Chap. 110, Art. 9, of the N.C. General Statutes, enacts the requirements of Title IV-D. The CSE program established by the North Carolina act is administered by the Child Support Enforcement Agency, a branch of the North Carolina Department of Health and Human Services. The programis usually administered at the county level; the local CSE program administrator hires a lawyer to institute the child support proceeding against the non-custodial, responsible parent. The proceeding is instituted in the name and on behalf of the government at the instigation of the custodian of the child who is named ex relatione (e.g., *County of Durham DSS ex rel. Stevons v. Charles*, 182 N.C. App. 505, 642 S.E. 2d 482 (2007)).

Lawyer A is defending a non-custodial parent in a child support action brought by the lawyer for the child support enforcement (CSE) program for the county. Does the CSE lawyer represent the custodian of the children?

Opinion #1:

The lawyer representing the CSE program does not represent the custodian of the children; the lawyer represents the government agency bringing the action. As previously observed in Ethics Decisions 279 and 2007-3, the purpose of the CSE program is to provide financial support to dependent children regardless of who currently has custody of a dependent child and regardless of who may currently owe support payments. "It would defeat the purpose of [CSE] legislation if a client-lawyer relationship were automatically created between the [CSE] lawyer and the custodian of the children because the lawyer would be unable to pursue any future child support action against such custodian should support and custody obligations switch." ED 279.

Nevertheless, if the CSE lawyer makes statements to the parent that would lead a reasonable person to believe that the lawyer is representing him or her personally, a client-lawyer relationship may be inferred. To avoid misleading the custodian as to the relationship, in any private conference with a custodian (outside of court proceedings), "the [CSE] lawyer should explain that he or she is not the custodian's lawyer; that their conversations are not protected by the duty of confidentiality; and that if the interests of the government and the custodian of the children diverge, the lawyer will represent the interests of the government." ED 279.

Inquiry #2:

Lawyer A wants to serve discovery on the custodian of the children. Should the discovery be served on the lawyer for the CSE program or on the custodian of the children?

Opinion #2:

This is a question of civil procedure and trial strategy that is outside of the purview of the Ethics Committee. However, if Lawyer A decides to seek information directly from the custodian, it would not violate Rule 4.2 unless the custodian is represented by his or her own lawyer in the matter.

During the representation of a client, Rule 4.2 prohibits a lawyer from

communicating with a person that the lawyer knows is represented in the matter unless the lawyer has the consent of the other lawyer or is authorized by law or court order to communicate with the person. Lawyer A's direct communications with the custodian will not violate Rule 4.2 because the CSE lawyer does not represent the parent. ED 2007-3 (lawyer appointed to represent defendant/non-custodial parent in child support case may communicate directly with custodial parent).

Inquiry #3:

Lawyer A wants to depose the custodian. The CSE lawyer informed Lawyer A that he would not attend the deposition. May Lawyer A proceed with the deposition?

Opinion #3:

Yes. If the custodian was properly served with notice of the deposition, there is no prohibition on proceeding with the deposition although the CSE lawyer fails to appear. Even when a deponent is represented by a lawyer in a matter, if the deposition is properly noticed and the lawyer for the deponent fails or refuses to appear, the lawyer noticing the deposition may proceed. Such communications are "authorized by law" and, therefore, not prohibited by Rule 4.2.

Inquiry #4:

In a case involving international child support enforcement issues, the CSE lawyer, who works in the North Carolina Attorney General's Office, would like to call another lawyer from the attorney general's staff to testify as an expert. Does this violate the Rules of Professional Conduct?

Opinion #4:

No. Rule 3.7(a) prohibits a lawyer from acting as an advocate at a trial in which the lawyer is likely to be a necessary witness. However, this disqualification is not imputed to the other lawyers in same firm or organization unless the lawyer's testimony would be adverse to the interests of the firm or organization's client. Rule 3.7(b).

2010 Formal Ethics Opinion 8

July 23, 2010

Consultation with Lawyer as Prospective Mediator

Opinion rules that a lawyer who consults with both parties to a dispute relative to the lawyer's prospective service as a mediator may not subsequently represent one of the parties to the dispute.

Inquiry:

Lawyer consulted with Husband on two occasions about separating from Wife. During both meetings, only questions about mediating the marital dissolution were discussed.

Wife attended the third consultation with Lawyer. At the meeting, Lawyer disclosed the prior two meetings with Husband. He also advised Wife that he would remain "neutral" during the meeting with her; would not give either party legal advice; and would only discuss the mediation process. Wife informed Lawyer that she was represented by her own lawyer. Lawyer told Wife that he was willing to serve as the mediator for the marital dispute/dissolution if her lawyer advised her to agree. Lawyer also told Wife that he had discussed his potential roles as either advocate or mediator with Husband in the prior meetings and that, for the present, Husband chose to keep Lawyer "neutral."

At their request, Lawyer subsequently sent a separation checklist to both Husband and Wife. The checklist gives information about the issues a separation agreement should address. It does not provide substantive advice.

Wife consulted with her lawyer and decided not to pursue mediation. Husband would now like to employ Lawyer as his advocate in the equitable distribution action filed by Wife. May Lawyer represent Husband in the equitable distribution action?

Opinion:

No. If Lawyer was acting in the role of a mediator when he consulted with Wife, Rule 1.12(a), *Former Judge, Arbitrator, Mediator, or Other Third-Party Neutral*, prohibits him from representing anyone in connection with a matter in which he participated personally and substantially as a mediator unless all of the parties to the proceeding give informed consent confirmed in writing. Although the mediation never occurred, Lawyer still held himself out to be a neutral and had substantive discussions with Wife about the mediation process. Therefore, he participated substantially in the mediation process and, to protect the integrity of the neutral role of mediators, he is disqualified from representing Husband without the consent of Wife.

2010 Formal Ethics Opinion 9

July 23, 2010

Using Stock Photographs in Advertising

Opinion rules that a dramatization disclaimer is not required when using a stock photograph in an advertisement so long as, in the context of the advertisement, the stock photograph is not materially misleading.

Inquiry:

Are dramatization disclaimers required when using stock photographs in a print or video advertisement for legal services?

Opinion:

No. Rule 7.1, *Communications Concerning a Lawyer's Services,* sets forth the essential requirements for all advertising by lawyers. Rule 7.1(a) states that a lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. Rule 7.1(b) provides that a communication by a lawyer that contains a dramatization depicting a fictional situation is misleading unless it contains a conspicuous statement at the beginning and end of the communication "explaining that the communication contains a dramatization and does not depict actual events or real persons."

Dramatizations of fictional cases in video advertisements ("commercial dramatizations") are potentially misleading. *See* RPC 164. Therefore, such advertisements require the dramatization disclaimer. *See* Rule 7.1(b). "Stock photographs" are professional photographs of common places, events, or people that can be used and reused for advertising. Like commercial dramatizations, stock photographs do not depict actual events or actual clients. However, unlike commercial dramatizations, stock photographs, because they are static, do not have the same tendency to mislead a consumer of legal services. Unless in the context of the advertisement or marketing document, the stock photograph creates a material misrepresentation of fact, a stock photograph may be included in legal advertisement without a dramatization disclaimer. *See* Rule 7.1(a)(1).

Index to Ethics Opinions

Editor's Note:

"RPC" denotes an ethics opinion that was adopted prior to July 24, 1997, under the superseded 1985 Rules of Professional Conduct. "FEO" denotes a "Formal Ethics Opinion" adopted under the Rules of Professional Conduct as comprehensively revised on July 24, 1997, and on February 27, 2003. See the editor's note that precedes the Rules, *supra*, for background on the 1997 and 2003 revisions of the Rules. The editor's note also explains the effect of the adoption and amendment of the Rules on ethics opinions promulgated under the 1985 Rules and the 1997 and 2003 versions of the Rules.

CONFLICTS OF INTEREST

CONSENT

WORKERS' COMPENSATION